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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DUMP TRUCK OWNERS  
ASSOCIATION,

No. 2:11-cv-00384-MCE-GGH

Plaintiff,

MEMORANDUM AND ORDER

v.

MARY D. NICHOLS, et al.,

Defendants.

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Presently before the Court is Plaintiff California Dump Truck Owners Association's ("CDTOA" or "Plaintiff") Motion for Preliminary Injunction ("Motion"). By its Motion, CDTOA seeks to preliminarily enjoin enforcement of California's "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles," Cal. Code Regs. tit. 13, § 2025 ("the Regulation" or "the Rule"), by Mary D. Nichols, Chairperson of the California Air Resources Board, and James Goldstene, Executive Officer of the California Air Resources Board, (collectively "ARB") on the basis that the Regulation is preempted by federal law.

1 The ARB and Defendant-Intervenor National Resources Defense  
2 Counsel ("NRDC") opposed CDTOA's Motion, and a hearing was held  
3 before this Court on December 15, 2011. For the following  
4 reasons, Plaintiff's Motion is DENIED.

5  
6 **BACKGROUND**

7 **A. Procedural Background**

8  
9 CDTOA initiated this action on February 11, 2011, and filed  
10 its operative First Amended Complaint ("FAC") on April 6, 2011.  
11 ECF Nos. 1 and 12. By Memorandum and Order dated May 20, 2011,  
12 this Court granted NRDC leave to intervene as Defendant. ECF  
13 No. 18.

14 Just over one month later, CDTOA filed a motion for summary  
15 judgment, which it set for hearing on this Court's September 6,  
16 2011 calendar. ECF No. 22, 25. Per the subsequent stipulation  
17 of the parties and the Order of this Court, hearing on the  
18 parties' cross-motions for summary judgment was reset for  
19 January 26, 2012.<sup>1</sup> ECF Nos. 29-30. Since the effective date of  
20 the Regulation was January 1, 2012, which is prior to the time  
21 the dispositive motions will be resolved, CDTOA filed the instant  
22 Motion seeking to temporarily enjoin enforcement of the Rule  
23 until such time as those summary judgment motions can be heard  
24 and decided. Motion, 1:17-22.

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28 <sup>1</sup> That hearing has since been continued to February 9, 2012.  
ECF No. 53.

1           **B. Factual Background**

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3           The challenged Regulation was adopted in 2008 and is  
4 intended to reduce amounts of diesel particulate matter ("PM")  
5 and oxides of nitrogen ("NOx") emissions from diesel-fueled  
6 trucks and buses operating within the state. ARB Opposition,  
7 1:6-8; 3:3-5.<sup>2</sup> The Regulation was adopted as part of  
8 California's plan to satisfy national air quality standards set  
9 by the federal Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.

10           Over eighty-percent of California's nearly one million  
11 heavy-duty trucks are fueled by diesel, and those diesel-fueled  
12 vehicles are the largest source of PM and NOx emissions in  
13 California. Id., 2:5-9. According to the ARB, those emissions  
14 "contribute to ambient levels of PM composed of particles 2.5  
15 microns or less in diameter," which cause a variety of health  
16 problems, up to and including death. Id., 2:12-16. NOx is also  
17 a "precursor to ozone," exposure to which carries its own health  
18 risks. Id., 2:17-19.

19           The Regulation combats these emissions in two ways. First,  
20 covered vehicles are required to have diesel particulate filters  
21 installed to reduce PM emissions. Id., 3:13-14. Accordingly, by  
22 the applicable regulatory deadlines, older trucks will need to  
23 either be retrofitted with filters or have their engines replaced  
24 with model year 2007 or newer engines, engines that are already  
25 equipped with updated filtering technology. Id., 3:14-17.

26  
27           <sup>2</sup> Many of these relatively undisputed facts are repeated in  
28 multiple filings. Where appropriate for convenience, however,  
the Court limits citations to one source.

1 In addition, all engines will have to be upgraded to model year  
 2 2010 engines (or engines with equal or lower emissions) by  
 3 separate regulatory deadlines. Id., 3:17-19. The NRDC provided  
 4 a chart helpful in illustrating the compliance schedule:

Engine Model Year Schedule	
Engine Year	Requirement from January 1, 2012
Pre-1994	No requirements until 2015, then 2010 engine
1994-95	No requirements until 2016, then 2010 engine
1996-99	PM filter from 2012 to 2020, then 2010 engine
2000-04	PM filter from 2013 to 2021, then 2010 engine
2005-06	PM filter from 2014 to 2022, then 2010 engine
2007-09	No requirements until 2023, then 2010 engine
2010	Meets final requirements

14  
 15 NRDC Opposition, 4:3-12.

16 Accordingly, most heavy-duty trucks must have filters  
 17 installed by 2014. ARB Opposition, 3:20-21. Similarly, all  
 18 heavy-duty truck engines must be replaced with model year 2010  
 19 engines by 2023. Id., 3:22-24. The only real requirement  
 20 effective in 2012, then, is that fleets of trucks with 1996 to  
 21 1999 model year engines must install the requisite filters. Id.,  
 22 4:2-4. Compliance with the Regulation even as to these trucks  
 23 can nonetheless be delayed under certain provisions of the Rule.  
 24 Id., 4:4-10. In addition, there are grants and loan assistance  
 25 programs available to help truck owners bring their vehicles into  
 26 compliance. Id., 4:11-21. In fact, in response to the national  
 27 recession, the ARB amended the Regulation last year specifically  
 28 to reduce compliance costs. Id., 3:5-7.

1 Accordingly, while it is estimated that the Regulation will cost  
2 \$1.5 billion over the first five years of its implementation and  
3 \$2.2 billion over the Rule's life, NRDC Opposition, 4:27-28, the  
4 amendments are expected to reduce compliance costs by fifty to  
5 sixty percent. Id., 3:8-10.

6 CDTOA is a trade association representing nearly 1,000  
7 trucking companies "whose business constitutes over 75% of the  
8 hauling of dirt, rock, sand, and gravel operations in  
9 California." Motion, 1:10-13. CDTOA contends that "[v]irtually  
10 all of the trucks owned and operated by CDTOA members are subject  
11 to the [Regulation]" and that the Rule "imposes steep fines and  
12 penalties on anyone who operates their trucks in violation of the  
13 [R]egulation." Id., 2:16-18; 2:26-3:2. According to the CDTOA,  
14 however, retrofitting the covered trucks is prohibitively  
15 expensive for many of its members and makes the vehicles less  
16 efficient, more prone to breakdowns, and harder to resell. FAC,  
17 ¶¶ 7-11. CDTOA thus contends that if the Regulation is enforced,  
18 its members will suffer irreparable harm, "including...loss  
19 of...businesses and livelihoods, which in turn will proximately  
20 cause some members to be at risk of losing their trucks, homes,  
21 cars, and the ability to purchase the basic necessities of life."  
22 Id., ¶ 20.

23 Indeed, according to the CDTOA, its members' primary source  
24 of livelihood is their diesel-powered trucks. Motion, 3:3-4.  
25 Members anticipate utilizing their trucks for decades, and they  
26 purchase those trucks via conditional sales contracts typically  
27 extending five or six years. Id., 3:4-5.

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1 The diesel trucks at issue here typically cost at least \$130,000,  
2 and can easily cost over \$210,000. Id., 3:5-7. Finance charges  
3 run around fifteen to twenty percent. Id., 3:5-6.

4 The available technology necessary to retrofit CDTOA  
5 members' trucks in compliance with the Regulation, however, costs  
6 at least \$18,000 per truck. Id., 3:10-12. CDTOA contends that  
7 its members cannot afford to pay these types of compliance costs,  
8 and that, especially in light of the other economic factors  
9 currently affecting the construction industry, if forced to  
10 either comply or cease operations, those members will likely lose  
11 their businesses. Id., 3:12-4:6. CDTOA claims that, at the very  
12 least, its members will be forced to make tough business  
13 decisions prior to resolution of the parties' dispositive  
14 motions. Id., 4:9. For example, CDTOA members allege they may  
15 have to decide whether to lay off employees or to sell older  
16 trucks to subsidize the cost of future compliance with the  
17 Regulation. Id., 4:9-6:21 (citing Declarations of Ernie Wipf  
18 ("Wipf Decl."), Mike Parigini ("Parigini Decl."), Jed Kern ("Kern  
19 Decl.") and Tom Santoro ("Santoro Decl.")). Likewise, CDTOA  
20 contends its members will have to raise prices or reduce services  
21 in order to ensure compliance with the Regulation to counter the  
22 increase in costs. See, e.g., id., 4:19-20 (citing Wipf Decl.,  
23 ¶ 5); 5:14-17 (citing Parigini Decl., ¶ 5); 6:3-8 (citing Kern  
24 Decl., ¶ 6); 6:18-21 (citing Santoro Decl., ¶ 5); 9:2-9.

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1 This Court now finds that CDTOA has failed to show a likelihood  
2 of success on the merits of its claim that the Regulation is  
3 preempted by the FAAAA, 49 U.S.C. § 14501(c)(1). Accordingly,  
4 the Court need not reach the parties' dispute regarding the  
5 safety exception, and CDTOA's Motion is DENIED.<sup>3</sup>

6 Resolution of the preemption issue "commence[s] with the  
7 assumption that state laws dealing with matters traditionally  
8 within a state's police powers are not to be preempted unless  
9 Congress's intent to do so is clear and manifest." Californians  
10 for Safe and Competitive Dump Truck Transportation v. Mendonca  
11 ("Mendonca"), 152 F.3d 1184, 1186 (9th Cir. 1998) (citing Rice v.  
12 Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)). The  
13 prevention of air pollution falls within the states' traditional  
14 police powers. Pacific Merchant Shipping Ass'n v. Goldstene,  
15 639 F.3d 1154, 1167 (9th Cir. 2011). "Thus, the crux of this  
16 case is whether Congress exhibited a clear and manifest intent to  
17 preempt" the Regulation. Mendonca, 152 F.3d at 1187.

18 "On January 1, 1995, Section 601 of the [FAAAA] became  
19 federal law. As a general matter, this section preempts a wide  
20 range of state regulation of intrastate motor carriage." Id. As  
21 relevant here, the FAAAA provides:

22 [A] State...may not enact or enforce a law, regulation,  
23 or other provision having the force and effect of law  
24 related to a price, route, or service of any motor  
25 carrier...with respect to the transportation of  
26 property.

26 <sup>3</sup> The NRDC also argues that the Regulation cannot be  
27 preempted by the FAAAA because such preemption would result in  
28 the implied repeal of the CAA. NRDC Opposition, 6:5-11:16.  
Because the Court finds CDTOA is unlikely to succeed on the  
merits of its statutory preemption argument, however, it need not  
reach this additional issue.

1 49 U.S.C. § 14501(c)(1) (emphasis added). Congress enacted this  
2 preemption provision because it "believed that across-the-board  
3 deregulation was in the public interest as well as necessary to  
4 eliminate non-uniform state regulations of motor carriers which  
5 had caused 'significant inefficiencies, increased costs,  
6 reduction of competition, inhibition of innovation and  
7 technology, and curtail[ed] the expansion of markets.'" Mendonca,  
8 152 F.3d at 1187 (quoting H.R. Conf. Rep. No. 103-677 at 86-8  
9 (1994)). In addition, "by enacting a preemption provision  
10 identical to an existing provision deregulating air carriers (the  
11 Airline Deregulation Act ('ADA')), Congress sought to 'even the  
12 playing field' between air carriers and motor carriers." Id.<sup>4</sup>

13 The Supreme Court in Rowe v. New Hampshire Motor Transport  
14 Ass'n, 552 U.S. 364 (2008), subsequently considered the reach of  
15 the FAAAA's preemption clause. According to Rowe, "(1)...[s]tate  
16 enforcement actions having a connection with, or reference to  
17 carrier rates, routes, or services are pre-empted; (2)...such  
18 pre-emption may occur even if a state law's effect on rates,  
19 routes or services is only indirect; (3)...in respect to  
20 preemption, it makes no difference whether a state law is  
21 'consistent' or 'inconsistent' with federal regulation; and

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22  
23 <sup>4</sup> The imbalance alluded to here "arose out of [the Ninth  
24 Circuit's] decision in Federal Express Corp. v. California Pub.  
25 Utils. Comm'n, 936 F.2d 1075 (9th Cir. 1991). By holding that  
26 Federal Express fit within the ADA's definition of 'air carrier,'  
27 [that] court concluded that California's intrastate economic  
28 regulations of the carrier's shipping activities were preempted.  
As a result, air-based shippers gained a sizeable advantage over  
their more regulated, ground-based shipping competitors. By  
preempting the states' authority to regulate motor carriers,  
Congress sought to balance the regulatory 'inequity' produced by  
the ADA's preemption of the states' authority to regulate air  
carriers." Id.

1 (4)...preemption occurs at least where state laws have a  
2 'significant impact' related to Congress' deregulatory and  
3 preemption-related objectives." 552 U.S. at 370 (internal  
4 citations and quotations omitted) (emphasis omitted). The Rowe  
5 Court recognized "Congress' overarching goal as helping assure  
6 transportation rates, routes, and services that reflect 'maximum  
7 reliance on competitive market forces,' thereby stimulating  
8 'efficiency, innovation, and low prices,' as well as 'variety'  
9 and 'quality.'" Id. (internal citations omitted). That Court  
10 nonetheless observed that "federal law might not pre-empt state  
11 laws that affect fares in only a 'tenuous, remote, or  
12 peripheral...manner.'" Id. (internal citations omitted).

13 The line at which a particular regulation crosses from  
14 impermissibly relating to carrier prices, routes, or services,  
15 and becomes "tenuous, remote, or peripheral," remains unclear,  
16 though the Ninth Circuit recently provided guidance on the issue:

17 The terms "rates, routes, and services" were "used by  
18 Congress in the public utility sense; that is, service  
19 refers to such things as the frequency and scheduling  
20 of transportation, and to the selection of markets to  
21 or from which transportation is provided....Rates  
22 indicates price; routes refers to courses of travel."  
23 Air Transport Ass'n of Am. v. City & Cnty. of San  
24 Francisco, 266 F.3d 1064, 1071 (9th Cir. 2001)  
25 (internal quotation marks, citations, and alterations  
26 omitted); see also Rowe, 552 U.S. at 372-73 (describing  
27 a motor carrier's services as its system for picking  
28 up, sorting, and carrying goods).

13 In determining whether a provision has a connection to  
14 rates, routes, or services, we must examine the actual  
15 or likely effect of a State's action. Cf. Cal. Div. of  
16 Labor Standards Enforcement v. Dillingham Constr. NA,  
17 Inc., 519 U.S. 316, 325 (1997); Californians for Safe &  
18 Competitive Dump Truck Transp. v. Mendonca, 152 F.3d  
19 1184, 1189 (9th Cir. 1998).

1 If the State, for example, mandates that motor carriers  
2 provide a particular service to customers, or forbids  
3 them to serve certain potential customers, the effect  
4 is clear, and the provision is preempted if it has the  
5 force and effect of law. See Rowe, 552 U.S. at 372-73;  
6 Morales [v. Trans World Airlines, Inc.], 504 U.S. 374,  
7 388-89 (1992)] (noting that advertising guidelines  
8 expressly referenced rates and had a forbidden  
9 significant effect on the fares charged). The waters  
10 are murkier, though, when a State does not directly  
11 regulate (or even specifically reference) rates,  
12 routes, or services. We recognize that FAAA Act "pre-  
13 emption may occur even if a [S]tate law's effect on  
14 rates, routes, and services 'is only indirect.'" Rowe,  
15 552 U.S. at 370 (quoting Morales, 504 U.S. at 386). At  
16 the same time, we require that the effect on rates,  
17 routes or services be more than "tenuous" or "remote."  
18 Id. at 371 (quoting Morales, 504 U.S. at 390).

19 In such a "borderline" case, the proper inquiry is  
20 whether the provision directly or indirectly, "binds  
21 the ...carrier to a particular price, route or service  
22 and thereby interferes with competitive market forces  
23 within the...industry." Air Transport, 266 F.3d at  
24 1072; cf. Am. Airlines, Inc. v. Wolens, 513 U.S. 219,  
25 232-33 (1995) (holding that the Airline Deregulation  
26 Act's preemption clause "stops States from imposing  
27 their own substantive standards with respect to rates,  
28 routes, or services" but does not prevent States from  
enforcing dispute resolution provisions in contracts  
signed by airlines); Mendonca, 152 F.3d at 1189  
(holding that a State minimum wage statute did not  
affect rates, routes or services).

American Trucking Associations, Inc. v. City of Los Angeles,  
660 F.3d 384, 396-97 (9th Cir. 2011) (internal footnotes  
omitted).

For its part, CDTOA thus argues that the cost of compliance  
with the Regulation is so great that, to compensate, CDTOA  
members will be required to increase prices or decrease service  
levels. Some operators believe the cost of compliance will force  
them out of business, and CDTOA believes the ARB's own estimate  
that the Regulation will cost the industry \$2.2 billion evidences  
the impact the rule will have on carrier prices.

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1 Various truck owners also aver that reduction in fleet sizes will  
2 reduce the level of services they can provide customers.  
3 Finally, CDTOA argues that the Regulation will affect existing  
4 routes because "the available retrofit technology limits the  
5 length of time trucks can run continuously" so that CDTOA members  
6 will likely have to alter routes to accommodate for their trucks'  
7 more limited operational capacity.

8 The ARB and NRDC argue, to the contrary, that any  
9 relationship between the Regulation and CDTOA's members' prices,  
10 routes or services is "remote, tenuous, and peripheral" at best.  
11 More specifically, they assert that: 1) cost increases alone are  
12 insufficient to warrant a finding that the instant Rule is  
13 impermissibly "related to" carrier "prices"; 2) the Regulation  
14 does not bind motor carriers to any particular services; and  
15 3) CDTOA has put on insufficient evidence that the technology  
16 required under the Regulation impacts trucks' functionality or,  
17 consequently, the routes on which those vehicles can travel. The  
18 ARB and the NRDC have the better argument, and, for purposes of  
19 the instant Motion, the CDTOA has not convinced this Court that  
20 the effect of the Regulation on its members' prices, services or  
21 routes is anything other than "tenuous" or "remote" or that the  
22 rule somehow "binds" carriers "to a particular price, route or  
23 service" thereby interfering with competitive market forces.

24 First, in Mendonca, the Ninth Circuit rejected an FAAAA  
25 preemption challenge to California's Prevailing Wage Law,  
26 California Labor Code §§ 1770-80 ("CPWL"), that is similar in  
27 principle to CDTOA's instant challenge. 152 F.3d 1184.

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1 In that case, the plaintiffs, public works contractors providing  
2 transportation-related services, filed suit against several  
3 California agencies alleging that the CPWL, which required  
4 contractors and subcontractors awarded public works contracts to  
5 pay "not less than the general prevailing rate...for work of a  
6 similar character in the locality in which the public work is  
7 performed," was preempted by the FAAAA. Id. at 1186. The Ninth  
8 Circuit affirmed the district court's decision granting the  
9 defendants' subsequent motion to dismiss and holding that the  
10 CPWL was not preempted. Id. at 1186, 1190.

11 As pertinent here, the Mendonca plaintiffs argued that their  
12 prices were dependent, in part, on wage rates and that the CPWL  
13 wage requirements there had both increased plaintiffs' prices by  
14 25% and forced plaintiffs to "re-direct and re-route equipment"  
15 to compensate for losses in revenue. Id. at 1189. The Ninth  
16 Circuit acknowledged that, "[w]hile CPWL in a certain sense [was]  
17 'related to' [plaintiffs'] prices, routes and services,...the  
18 effect [was] no more than indirect, remote, and tenuous." Id.  
19 The CPWL was thus not "related to" the plaintiffs' prices,  
20 routes, and services as intended by the FAAAA, and, despite  
21 plaintiffs' allegations that the CPWL increased their wage costs  
22 and thus forced plaintiffs to dramatically increase their prices,  
23 the Ninth Circuit found the effect on "prices" too attenuated to  
24 hold the CPWL preempted. Id.

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1 Plaintiff's action before this Court is on par with  
2 Mendonca. Indeed, Plaintiff's primary basis for claiming the  
3 Regulation is related to prices is that the costs of compliance  
4 are so exorbitant Plaintiff will have no viable alternative other  
5 than to raise prices. Pursuant to Mendonca, however, while the  
6 Regulation may be "in a certain sense" related to CDTOA members'  
7 prices, that relationship is likely insufficient to warrant a  
8 preemption finding here.

9 In light of Mendonca, Plaintiff has likewise failed to  
10 convince the Court it can show any more than a tenuous  
11 relationship between the Regulation and any of its members'  
12 "services." According to Plaintiff, "[c]ompliance with the rule  
13 will force trucking companies to...lower the level of service  
14 they provide." Motion, 13:9-10. Plaintiff's argument is,  
15 generally stated, that because costs of compliance are high, its  
16 members will have to reduce the size of their fleets, thus  
17 limiting the level of future service those members will be able  
18 to provide. Motion, 14:5-4. In fact, CDTOA contends that some  
19 of its members have already either dropped or anticipate dropping  
20 their service levels "to nothing, by essentially going out of  
21 business." Motion, 14:12-14. Plaintiff's argument, however, is  
22 insufficient to justify a preemption finding because nothing in  
23 the Regulation actually "binds" Plaintiff's members to make any  
24 changes to their services.

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1 To the contrary, at its most basic, Plaintiff's service-  
2 related argument is simply an incarnation of its above cost-based  
3 "price" argument. Plaintiff is essentially arguing that the cost  
4 to comply with the Regulation is so high that business owners  
5 will choose to reduce fleet sizes and, thus, to reduce services.  
6 That is no different from CDTOA's prior argument in which  
7 Plaintiff claimed the cost to comply with the Regulation is so  
8 high that business owners will choose to raise prices.  
9 Accordingly, for the reasons already stated, and again pursuant  
10 to Mendonca, this argument is rejected.

11 CDTOA disagrees and asks this Court to instead rely on the  
12 district court decision in Dilts v. Penske, 2011 WL 4975520 (S.D.  
13 Cal. 2011), to find the Regulation preempted. That case,  
14 however, is not only not binding on this Court, it is  
15 distinguishable on its facts.

16 In Dilts, employees engaged in delivery services filed suit  
17 against their employer alleging violation of California's meal  
18 and rest break laws. Id. at \*2. According to the employees,  
19 they had not been provided the appropriate duty-free breaks. The  
20 Dilts court determined that "the length and timing of meal and  
21 rest breaks seems directly and significantly related to such  
22 things as the frequency and scheduling of transportation" because  
23 the "laws impact the number of routes each [employee] may go on  
24 each day," "the types of roads ...[employees] may take and the  
25 amount of time it takes them to reach their destination." Id.  
26 at \*9. Accordingly, in very simple terms, the applicable laws in  
27 that case mandated that drivers stop at particular intervals  
28 throughout the day.

1 During those intervals no services could be provided. Such is  
2 not the case here where the challenged rule instead simply  
3 mandates the technology that must be utilized on the trucks. The  
4 choice to forego any service for any period of time is thus not  
5 dictated by the Regulation; it is dictated by the owner or  
6 operator of the vehicle. The Regulation in the instant case is  
7 therefore much more analogous to Mendonca's prevailing wage laws,  
8 which required an across the board wage increase, than to the  
9 meal and rest break laws in Dilts.

10 Plaintiff's final contention, that the Regulation will  
11 affect routes, is also rejected. According to Plaintiff, the  
12 technology required by the Regulation is unreliable, causing  
13 breakdowns and fuel inefficiency, which will force carriers to  
14 choose to employ different routes. Plaintiff's evidence,  
15 however, is speculative at best. See Declaration of Lee Brown,  
16 ¶ 9 (indicating that "[a]necdotal stories now abound within the  
17 industry" regarding engine reliability and efficiency);  
18 Declaration of Jay Pocock, ¶¶ 5-6 (recounting declarant's  
19 negative experience with one filter on one truck). Accordingly,  
20 even assuming Plaintiff's argument could justify a finding that  
21 the Regulation more than tenuously or remotely affects its  
22 members' routes, which this Court doubts for the reasons already  
23 stated, the Court is simply not willing to preliminarily enjoin a  
24 state regulation on the basis of such scant evidence.

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1 Accordingly, CDTOA has not shown for purposes of the instant  
2 Motion that it is likely to succeed on the merits, nor has it  
3 raised substantial questions going to the merits, of its claim.<sup>5</sup>  
4

5 **B. Likelihood of Irreparable Harm**  
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7 Plaintiff has failed to carry its burden of showing that,  
8 absent an injunction, its members will likely suffer the  
9 requisite irreparable harm. CDTOA alleges its members will be  
10 required to spend thousands of dollars to bring their trucks or  
11 fleets of trucks into compliance with the Regulation. However,  
12 it is not seriously contested that only certain motor carriers  
13 with model year 1996 to 1999 engines are required to employ  
14 retrofit technology by January 1, 2012. Moreover, the ARB and  
15 the NRDC point out that these carriers can utilize compliance  
16 credits and delay provisions to reduce their immediate compliance  
17 costs, in some cases to zero. Accordingly, CDTOA has failed to  
18 show its members will be irreparably injured or that any injury  
19 is in any way "imminent." Moreover, the injunctive relief CDTOA  
20 seeks is much too broad because, despite the fact that only  
21 limited regulatory requirements go into effect in 2012, the CDTOA  
22 asks this Court to enjoin enforcement of the Regulation in its  
23 entirety. Motion, 20:3-4.  
24

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25 <sup>5</sup> Plaintiff's remaining authority, American Trucking  
26 Associations v. City of Los Angeles, 559 F.3d 1046 (9th Cir. 2009)  
27 ("ATA"), does not persuade this Court otherwise, primarily  
28 because Plaintiff misconstrued its facts. When read properly,  
that case has no real relevance to the decision facing this Court  
now. Accordingly, this Court rejects CDTOA's invitation to rely  
on ATA.

1 Accordingly, CDTOA has failed to show that its various doomsday  
2 predictions are imminently likely to come to fruition or that  
3 injunctive relief, especially of the magnitude sought here, is  
4 warranted.

5  
6 **C. Balance of Hardships and the Public Interest**

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8 Given this Court's above findings, the Court also now holds  
9 that the public interest and the balance of hardships weigh in  
10 favor of denying injunctive relief. As just stated, the  
11 hardships likely to befall CDTOA's members in the immediate  
12 future are speculative, appear somewhat exaggerated, and in no  
13 sense do they outweigh the interest of the State of California in  
14 enforcing its own rules or the interest of the public in reducing  
15 emissions. Moreover, CDTOA assumes this case will be resolved  
16 short of trial and that any injunction entered will consequently  
17 be of short duration. This assumption, however, is itself  
18 speculative; if it proves incorrect, any injunction could extend  
19 much longer. See Motion, 10:16-18 (seeking an injunction "until  
20 [the Court] can rule on whether the Regulation is preempted by  
21 federal law"). Finally, CDTOA had ample time to challenge the  
22 Regulation prior to the January 1, 2012, effective date and chose  
23 not to do so until the relative last minute. To permit CDTOA to  
24 capitalize on that delay by awarding an injunction now would be  
25 inequitable. Likewise, awarding injunctive relief at this late  
26 date would be unfair to those motor carriers who have already  
27 undertaken compliance measures in advance of the Regulation's  
28 effective date.

1 Accordingly, the balance of hardships and the public interest  
2 weigh against granting CDTOA's requested relief.

3  
4 **CONCLUSION**

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6 Accordingly, for the reasons just stated, CDTOA's Motion is  
7 DENIED.

8 Dated: January 27, 2012

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MORRISON C. ENGLAND, JR.  
12 UNITED STATES DISTRICT JUDGE  
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