

Dust storm!

Hazardous trucking conditions require "extreme caution" by truck drivers under federal and state regulations

By Jordan Jones

Dust storms present extremely dangerous and sometimes unpredictable driving conditions. They can occur naturally or as a result of farming and industrial activities. These events are particularly common in agricultural areas like the Central Valley counties of Kern, Tulare, and Fresno. Despite their prevalence, there is not much guidance about best practices for truck drivers in dust storms.

For instance, the Federal Motor Carrier Safety Regulations (FMCSR) section 392.14 instructs truck drivers to exercise "extreme caution" in hazardous conditions affecting visibility and specifically identifies dust storms. However, the American Association of Motor Vehicle Administrators (AAMVA) Model Commercial Driver's License (CDL) Manual, and the California Commercial Driver's Handbook are silent on this issue. They simply don't address dust.

This raises key questions for litigators: What is the industry custom and practice? What is the standard of care? How do we deal with sudden emergency? And how can we effectively prove these standards in a legal case?

Getting to section 392.14 of the Federal Motor Carrier Safety Regulations

Getting to section 392.14 is important because of its implications for the applicable standard of care. As a preliminary matter, to reach section 392.14, we must establish that the case involves interstate commerce or that the statute otherwise applies. This is critical. Motor carriers engaged in interstate commerce are subject to the FMCSRs. (*Vargas v. FMI, Inc.* (2015) 233 Cal.App.4th 638.) However, at least one unpublished California opinion has held that the FMCSRs do not apply to *intrastate* commerce. (*Howard v. Ramirez* (Cal.Ct. App., May 27, 2003, No. B154299) 2003 WL 21214139 ["We conclude that the trial court did not err in refusing to allow [the expert] to testify regarding the standard of care under the FMCSR… the trial court rejected admission of that evidence on the basis that the FMCSR apply to interstate rather than to intrastate commerce."].)

Outside of interstate commerce, another avenue exists under the Vehicle Code. Effective January 1, 2024, California amended the code to require that "motor carriers, drivers, and vehicles shall comply with the Federal Motor Carrier Safety Regulations in…392." (Veh. Code, § 34500.7, subd. (a).) This applies to "truck tractors" (Veh. Code, § 34500, subd. (b)), commercial vehicles weighing 26,001 pounds or more (Veh. Code, § 34500, subd. (k)), and "[a]ny other motortruck regulated" by the DMV, DOT, or Department of Consumer Affairs (Veh. Code, § 34500, subd. (j)).

But we can't stop there. To fall under section 392.14, the record must reflect that dust was adversely affecting visibility or traction. In dust-storm cases, this is relatively easy to do. But do not overlook it, because that is required for the statute to be applicable.

The truck driver's duty of care – "Extreme caution"

As stated in the introduction, section 392.14 of the FMCSR specifies that truck drivers must use "extreme caution" when visibility is adversely affected by dust. (49 CFR § 392.14.) If conditions become sufficiently dangerous, the regulation requires drivers to exit the roadway as soon as it is safe to do so. (*Ibid.*) Department of Transportation (DOT) guidance on this regulation emphasizes that "the driver is clearly responsible for the safe operation of the vehicle and the decision to cease operation because of hazardous conditions." (See *DOT* § 392.14, *Hazardous Conditions; Extreme Caution, Guidance Q&A, Question 1*.)

California recognizes that hazardous conditions within the context of section 392.14 require a heightened standard of care beyond that of a reasonable person. (*Weaver v. Chavez* (2005) 133 Cal.App.4th 1350.) In California, it is appropriate to instruct the jury in accordance with federal regulations requiring "extreme caution." The *Weaver* court distinguished between "reasonable care" and "extreme care," emphasizing that the term "extreme" signifies the "[g]reatest, highest, strongest…" degree of care. (*Ibid.*)

This distinction in the standard of care underscores the importance of falling within the scope of section 392.14. *Weaver* makes it clear, in these cases, the "reasonable person" standard is "an incorrect standard of care." (*Ibid.*)

The role of driver training

Another important implication of getting into the FMCSRs is the duty to train. Driving in dust conditions is rarely covered in traditional truck-driving schools, and it is not addressed in the California Commercial Driver's Handbook. While dust storms may not be a concern in many parts of the country, or even in other parts of California, over-the-road trucking is transient by nature, and drivers are likely to encounter such conditions at some point. Good, safe trucking companies teach their drivers what to do in these conditions.

The FMCSRs mandate that all drivers "shall be instructed" in the

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applicable regulations. (49 CFR § 390.3(e)(2).) While trucking companies often argue it's the state's responsibility to make sure drivers can drive safely by way of testing them, the DOT says otherwise. The DOT has issued an "On-Guard" memo dating in 1997, which makes it clear that "[i]t is incumbent upon a prospective employer of a commercial vehicle driver to ensure that driver is properly trained to operate that employer's trucks[.]" (U.S. Department of Transportation (1997) *On Guard*, FHWA-MC-97-004.) The trucking company has to ensure its drivers are trained and safe.

Training may not necessarily be implicated in your case at trial. Under *Diaz v. Carcamo* (2011) 51 Cal.4th 1148, California largely adopted the "*McHaffie* rule," which essentially says when a trucking company admits vicarious liability for the driver's negligence, then active negligence claims against the company for negligent entrustment and hiring cannot be brought. (*McHaffie v. Bunch* (Mo.1995) 891 S.W.2d 822.) But there are exceptions, such as punitive damages. (*CRST, Inc. v. Superior Court* (2017) 11 Cal.App.5th 1255.) It should also be noted that *Diaz* itself limits its holding to "claims for negligent entrustment, hiring, or retention." (*Diaz v. Carcamo* (2011) 51 Cal.4th 1148.) It does not appear that *Diaz* has been extended to a claim for negligent training under the FMCSRs in a trucking case – at least in any published California opinion.

Rule sources for best practices

Although the AAMVA model CDL manual lacks specific guidance on dust storms, other resources provide valuable insights. Organizations like the SALT Institute, Inc., industry bodies, and government bodies, have developed critical best safety practices that we can look to and utilize through experts.

SALT Institute, Inc.

The Safe and Legal Transportation (SALT) Institute developed a safety manual dedicated entirely to accident avoidance. It is one of the most comprehensive trucking safety programs ever developed, and was created back in 1997. It should be noted that the SALT Institute, Inc. (not to be confused with The Salt Institute, which is a food industry group) is no longer operating. But its accident-avoidance manual is still relevant and used for driver training today.

SALT tells truck drivers to avoid "driving blind" at all costs and never knowingly enter dust storms. In the above-mentioned Accident Avoidance For the Professional Motor Carrier Operator safety training materials, the SALT Institute states that "professional truck drivers must exercise a high degree of care and accident avoidance knowledge in order to avoid catastrophic vehicular accidents." (SALT Institute, Inc. (1997), *Accident Avoidance For the Professional Motor Carrier Operator*, § 8-4.)

It advises that the best practice is to never get into the hazard condition in the first place and to give it time to clear by safely pulling off the roadway. (*Id.* at § 7-3.) Good drivers "quickly identify such conditions as blowing dust…and must always react long before they penetrate the curtain of darkness by coming to a stop and waiting until conditions clear." (*Ibid.*) It goes on to state that if the trucker finds him or herself inside the dust, "you will find yourself in a dilemma and anything you do may be wrong." (*Ibid.*) SALT recognizes that if you drive forward you may hit other vehicles, but if you stop, other vehicles may hit the truck. (*Ibid.*) It concludes that the "only answer" is to "get off the road." (*Ibid.*)

Arizona Trucking Association (ATA)

Endorsed by the National Weather Service, the ATA's materials advise truck drivers to avoid driving into dust storms and to "wait it out." Although this information is from an Arizona industry body, it is free and readily available online, widely cited in the industry, and a helpful resource. This resource can be utilized and relied upon by experts in the case to support their opinions about the applicable standard of care, and what constitutes extreme caution under section 392.14 of the federal regulations.

The ATA advises the safest practice is to avoid driving through dust storms, period. (Arizona Trucking Association (ATA). *Dust: A Perspective From Trucking*.) If a truck driver sees a dust storm ahead, the safest thing to do is pull over and wait. But if a driver is driving along and suddenly finds themselves in a dust storm, the materials instruct drivers to slow down and pull off the highway as soon as possible. It says "[d]o not wait until poor visibility makes it difficult to pull off the roadway – do it as soon as possible." (*Ibid.*)

National Weather Service (NWS)

Similarly, the National Weather Service publishes its own dust safety materials. The materials highlight that "[d]ust storms and Haboobs occur anywhere in the United States but are most common in the Southwest." (National Weather Service, *Dust Storms and Haboobs*.) Like SALT and the ATA materials, the NWS says the safest course of action is to pull your vehicle off the roadway as far as possible. It also says once safely off the road, to turn off all flashers and running lights so that other vehicles do not follow you off the roadway and strike your parked vehicle. (*Ibid.*)

Dealing with sudden emergency

California Civil Jury Instructions (CACI) 452 (2025) may be used when a party is faced with a sudden emergency. The "sudden emergency" or "imminent peril" doctrine provides that a person who is suddenly and unexpectedly confronted with danger – whether real or perceived – is not held to the same standard of judgment as someone acting under normal circumstances. (*Abdulkadhim v. Wu* (2020) 53 Cal.App.5th 298.)

However, the doctrine is not a complete defense; rather, it is used to assess whether a party's conduct was

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reasonable under the circumstances. (*Pittman v. Boiven* (1967) 249 Cal.App.2d 207.) It recognizes that individuals faced with imminent danger may not have the time to make calculated decisions and should not be judged with the benefit of hindsight. But a party cannot invoke the sudden emergency doctrine if their own negligence contributed to creating the perilous situation. (*Shiver v. Laramee* (2018) 24 Cal.App.5th 395.) If a party's actions helped bring about the emergency, they are not entitled to the protections of the doctrine. (*Ibid.*)

Applying this principle to dust-storm cases, a truck driver who sees a dust storm ahead yet chooses to drive into it cannot claim they were caught in a sudden emergency. This is especially true under the "extreme caution" standard set forth in section 392.14 and *Weaver*, as well as widely accepted industry safety materials.

At least one California case – although unpublished – has rejected the sudden-emergency defense in a dust storm. In *Rickman v. FedEx Freight, Inc.* (Cal.Ct.App., Oct. 8, 2024, No. G063921) 2024 WL 4440498, the court held that a truck driver could not claim sudden emergency where he saw a dust storm five miles ahead but continued driving into it instead of pulling over. He ultimately rear-ended another truck inside the dust.

Even in cases where a truck driver does not see a dust storm in advance, section 392.14 sets the standard as soon as the dust "adversely" affects visibility. (49 CFR § 392.14.) A truck driver has a heightened duty to exercise extreme caution, which includes pulling off the highway. If a safe shoulder or other stopping area is available, each moment the driver continues traveling rather than stopping, they are negligent under the applicable standard of care and the overwhelming weight of industry safety materials.

Another issue arises when passenger vehicles rear-end slow-moving trucks in dust storms. This is a well-documented risk in the trucking industry (see the aforementioned SALT Institute materials). In these cases, which are surprisingly common, the defendants argue comparative fault and even claim they, the truckers, were not negligent at all.

However, one could argue that the motorist, not the truck driver, was confronted with a sudden emergency – a slow-moving semi-truck in low-visibility conditions. This argument is available to a passenger vehicle because of the differing standards of care. A semi-truck driver is required to exercise *extreme caution* and pull off the highway, whereas an ordinary motorist is held to a *reasonableness* standard. A reasonable driver in a passenger vehicle may choose to proceed cautiously through a dust storm, but a semi-truck driver operating under the extreme caution standard is expected to pull onto the shoulder.

Applying it all to your case

The truck driver

Once we have incorporated the relevant documents and training materials, it is crucial to tie everything together to build a cohesive argument. It is not enough to merely demonstrate that these materials exist and outline general safe practices; we must connect them to our case.

A key strategy is to establish that it is hard for people to see the semi-truck in dust storms. The reason that drivers typically reduce their speed is because it is difficult to see other vehicles, and under those same conditions, it is equally difficult for other vehicles to see the semi-truck. Establishing that the truck itself is hard to see and is a hazard in the roadway is very important – especially if your client rear-ends the truck in dusty conditions. This goes to the foreseeability of the risk that another vehicle could rear-end the truck due to low visibility and its slow speed, just as the truck driver might rear-end another vehicle.

Next, it is important to demonstrate that the truck driver could have taken other reasonable actions, such as pulling off onto the shoulder, or ideally, never entering the dust in the first place. There may be legitimate reasons why a truck driver would hesitate to pull off the road – for example, the shoulder may have an uneven grade posing a rollover risk, it might be too narrow to accommodate the truck safely. So, it is essential to show that, *in this specific case*, a shoulder was available, unobstructed, and could have been used safely. This requires establishing that the driver had the option to pull off the roadway, knew that it was an available option, but failed to do so.

Finally, establish that it would have been a safer and reasonable alternative to pull off onto the shoulder and wait. This step ties together the rule sources, and the actions that could have been reasonably taken by the truck driver.

This all relates back to "extreme caution." While it may be *reasonable* to slow down and turn on hazard lights, section 392.14 does not call for "reasonableness." It calls for "extreme caution." In other words: the truck driver must exercise the "[g]reatest, highest, strongest" degree of care possible. (*Weaver v. Chavez* (2005) 133 Cal.App.4th 1350.) It is almost always safer to pull off on the shoulder in a dust storm – and again, this is why establishing the shoulder was an available option is so important.

The trucking company

In the larger scheme, it's not about what the truck driver did – it's about what's wrong with the system. To build a compelling argument and really get to the root of what went wrong, we have to show that this was, at its root, a training failure at the company level.

If we are able to get past *Diaz* (e.g., we have punitive damages, or the motor carrier does not admit vicarious liability), an effective strategy may be to establish that the CDL Manual does not address driving in dust conditions, nor is this topic typically covered in truck driving schools. Then use section 390.3(e)(2) in conjunction with the DOT On-Guard memo to illustrate that this gap necessitates that the trucking company train their drivers specifically for these hazardous dusty scenarios. Develop a

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record that shows the trucking company's awareness of their drivers' likelihood of encountering dust conditions while driving over the road, and establish the company has a duty to train.

This record should introduce the aforementioned available training materials and resources that could have been used to prepare drivers. Inquire whether the trucking company sought out these materials and, if so, what actions they took to ensure their drivers were adequately prepared for driving in dusty conditions.

Additionally, consider the routing. Routing decisions made by the trucking company should be scrutinized. Although somewhat limited, there is authority nationally supporting a cause of action for negligent route planning. (*Slack v. Kelleher* (2004) 140 Idaho 916.) Did the company evaluate the chosen routes for potential dust storm risks or look at weather forecasts as part of their planning process? The NWS provides clear recommendations for trucking companies to monitor weather conditions and plan accordingly to mitigate risks associated with dust storms. Establishing whether these recommendations were followed or even considered can further support the argument for liability and negligence.

Other liable parties

While some dust storms are naturally occurring, sometimes dust storms are caused or exacerbated by agricultural and industrial activities. For instance, nut harvesting operations frequently generate significant amounts of dust. These entities may have a duty to mitigate such hazards through measures like water suppression, signage, low-dust equipment, or traffic control. Do not overlook these potential defendants when litigating dust storm cases. Do your due diligence in pursuing these potentially culpable parties. While the trucking company may have put the driver in a bad position, so did the entity who created all the dust!

Conclusion

Dust-storm cases are uniquely challenging and require a multi-faceted approach. To ensure the best results for our clients, we must leverage industry materials to establish the standard of care, collaborate closely with experts, and explore liability among all potential defendants. By asking the right questions and developing a thorough record, attorneys can effectively advocate for clients in these complex cases and hopefully be a positive force driving safety reforms among those trucking companies who operate in dust-prone areas.

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