

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN “CLEAN  
DIESEL” MARKETING, SALES  
PRACTICES, AND PRODUCTS  
LIABILITY LITIGATION

---

This Order Relates To:  
  
ALL ACTIONS (except securities  
actions)

MDL No. 2672 CRB (JSC)

**PRETRIAL ORDER NO. 15: RELATING  
TO PRESERVATION OF DOCUMENTS  
AND ELECTRONICALLY STORED  
INFORMATION**

**SCOPE OF ORDER**

1. This Order shall govern the preservation of documents and electronically stored information (“ESI”) by Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations, LLC, Audi AG, Audi of America, Inc., Porsche AG, and Porsche Cars North America, Inc. (“Defendants”), the plaintiffs named in the consolidated class action complaints filed in this action on February 22, 2016 (ECF Nos. 1230, 1231, 1232 (the “Consolidated Complaints”)), and the United States of America (collectively, the “Parties”).

2. This Order is designed and shall be interpreted to ensure that preservation of Potentially Relevant Information is both effective and proportionate, and that the Parties have greater clarity as to their respective preservation obligations under applicable law, including the Federal Rules of Civil Procedure, effective December 1, 2015, especially with respect to ESI, and the measures being undertaken to Preserve Potentially Relevant Information.

**DEFINITIONS**

3. “Information” shall be interpreted broadly to include documents and ESI as that term is used in Rule 34 of the Federal Rules of Civil Procedure, effective December 1, 2015.

1           4.       “Potentially Relevant Information” is Information potentially relevant to the  
2 claims and defenses asserted in this action, and associated relief, including but not limited to:<sup>1</sup>

3               a.       The development, validation and pre-production testing of the emissions  
4 control systems evaluated for usage in diesel powered vehicles with respect to the Tier 2 exhaust  
5 emission standards of the Environmental Protection Agency (“EPA”) and/or applicable  
6 California or other U.S. state exhaust emission standards;

7               b.       The emissions certification and compliance status of MY 2009-2016  
8 Volkswagen, Audi and Porsche vehicles equipped with diesel engines sold or intended for sale in  
9 the United States and listed in Appendices A and B to the United States’ January 4, 2016  
10 complaint (the “Affected Vehicles”);

11              c.       The development, manufacture, and sales of the emissions-related  
12 diagnostic and control systems, including the electronic control modules (“Emissions Control  
13 Systems”) employed in the Affected Vehicles;

14              d.       Testing, calibration or evaluation of the Emissions Control Systems in the  
15 Affected Vehicles;

16              e.       The applications for, or U.S. federal or state agency action with respect to,  
17 the federal or state emissions certifications for the Affected Vehicles, or the compliance of the  
18 Emissions Control Systems of the Affected Vehicles with emissions regulations in the United  
19 States;

20              f.       Communications regarding the Emissions Control Systems installed in the  
21 Affected Vehicles with or by the following: the EPA, the California Air Resources Board, other  
22 governmental or regulatory authorities (whether or not in the U.S.), any entity or institution  
23 testing or verifying the performance of the Affected Vehicles, consumers, trade organizations,  
24 auto dealerships, other Defendants, and any other non-Party vendors or contractors;

25  
26 \_\_\_\_\_  
<sup>1</sup>       The inclusion of these topics is not intended to suggest that every Party possesses Information concerning  
27 all topics in this Paragraph. Likewise, the inclusion of these topics is not intended to suggest that steps  
28 beyond those required by applicable law, including the Federal Rules of Civil Procedure, effective  
December 1, 2015, must be taken to Preserve any such Information.

- 1           g.     Testing or rating of fuel efficiency or performance, such as horsepower,  
2 torque and acceleration, of the Affected Vehicles;
- 3           h.     Effect the Emissions Control Systems have on the fuel economy or the  
4 performance of the Affected Vehicles, if any;
- 5           i.     Economic benefit or savings, if any, derived from any non-compliance  
6 associated with the use of the Emissions Control Systems in the Affected Vehicles, including any  
7 alleged violations of the Clean Air Act;
- 8           j.     Data, research or analysis about the environmental or health impact, if  
9 any, due to the use of the Emissions Control Systems installed in the Affected Vehicles;
- 10          k.     Data, research or analysis regarding exhaust emissions from Affected  
11 Vehicles;
- 12          l.     Remedial actions, service actions, and recalls about the Emissions Control  
13 Systems of the Affected Vehicles;
- 14          m.     Awareness of and discussions regarding U.S. attainment or non-attainment  
15 areas under the Clean Air Act as it relates to sales of Affected Vehicles in those regions;
- 16          n.     Awareness of and discussions regarding the compliance or noncompliance  
17 of Affected Vehicles and Emissions Control Systems with Title II of the Clean Air Act and its  
18 implementing regulations, or analogous state statutes and regulations;
- 19          o.     Marketing and advertising campaigns for the Affected Vehicles;
- 20          p.     Sales data reflecting how many of each Affected Vehicle has been sold in  
21 each geographic region, major city and/or zip code;
- 22          q.     Vehicle registration data or analyses reflecting how many of each Affected  
23 Vehicle were registered in each geographic region, major city and/or zip code;
- 24          r.     The sale, lease, or other disposition, or attempted sale, lease, or other  
25 disposition, of an Affected Vehicle by or to any plaintiff named in the Consolidated Complaints;
- 26          s.     Any valuation by any plaintiff named in the Consolidated Complaints of  
27 any Affected Vehicle;
- 28

1 t. Statements or other representations about the Affected Vehicles that were  
2 allegedly relied upon by any plaintiff named in the Consolidated Complaints;

3 u. The use of any Affected Vehicle by any plaintiff named in the  
4 Consolidated Complaints;

5 v. Servicing, maintenance and repairs performed by any plaintiff named in  
6 the Consolidated Complaints on any Affected Vehicle;

7 w. The condition, including any modification or change in condition, of any  
8 Affected Vehicle during its ownership and/or possession by any plaintiff named in the  
9 Consolidated Complaints;

10 x. Communications, including those posted on any website or social media,  
11 by any plaintiff named in the Consolidated Complaints regarding any Affected Vehicle;

12 y. Out-of-pocket expenses claimed by any plaintiff named in the  
13 Consolidated Complaints;

14 z. The acquisition or sale by any plaintiff named in the Consolidated  
15 Complaints of any Affected Vehicles or vehicles that compete with any Affected Vehicles;

16 aa. Inventory records, financial records, and marketing and advertising  
17 records of any non-consumer plaintiff named in the Consolidated Complaints of any Affected  
18 Vehicles or vehicles that compete with any Affected Vehicles;

19 bb. Any claims or defenses associated with the United States' January 4, 2016  
20 complaint, and associated relief; and

21 cc. Any of the civil penalty factors set forth in 42 U.S.C. § 7524(b).

22 5. "Preserve(d)" shall mean to take good faith, reasonable and proportional steps to  
23 retain Potentially Relevant Information (including, where applicable, potentially relevant  
24 document metadata) in the Party's possession, custody or control.

25 **REQUIREMENTS**

26 6. This Order applies to Potentially Relevant Information as defined in Paragraph 4.  
27 Nothing herein shall be construed as impacting, changing, altering, or obviating the Parties'  
28 obligation to preserve tangible items other than Information, nor shall anything in this Order be

1 construed as impacting or obviating the Parties' obligation to comply with orders or duties  
2 relating to the preservation of evidence in other cases or investigations. Additionally, nothing  
3 herein shall be construed to expand the preservation obligations of the parties beyond the  
4 requirements of applicable law, including the Federal Rules of Civil Procedure, effective  
5 December 1, 2015.

6 7. The Parties have met and conferred regarding preservation issues consistent with  
7 their obligations under the Federal Rules of Civil Procedure and the Northern District of  
8 California's Guidelines for the Discovery of Electronically Stored Information. The Parties will  
9 continue to have these meet and confer discussions in order to identify the sources, scope, and  
10 type of Information that has been and will be Preserved.

11 8. Given the varying approaches used by the Parties to manage Information  
12 (including the management of ESI), it is not practical at this point to delineate a single detailed  
13 process that all Parties must follow to Preserve Potentially Relevant Information. Pending the  
14 Parties' continued exchange of information and meet and confer discussions, the Court will  
15 permit a Party to select and use its own method to Preserve Potentially Relevant Information, so  
16 long as the method enables the Party to meet its obligations under applicable law, including the  
17 Federal Rules of Civil Procedure, effective December 1, 2015. In the event that questions arise  
18 as to whether or how Information should be Preserved under this Order, counsel for the Parties  
19 shall meet and confer. If the Parties are unable to agree, they may apply to this Court for  
20 clarification or relief from this Order upon reasonable notice. Before any Party files any motion  
21 with any court regarding the terms of this Order or compliance with this Order, counsel for that  
22 Party shall meet and confer in a good faith attempt to resolve the dispute.

23 9. During the pendency of the Parties' discussions pursuant to Paragraphs 7-8, no  
24 Party shall be relieved from retaining Potentially Relevant Information segregated or otherwise  
25 preserved pursuant to the preservation measures that it implemented pursuant to applicable law  
26 or order entered in any action transferred to this MDL.

27 10. The United States is focused on preserving unique Information and therefore may  
28 not be preserving some categories of data.

1           11. By Preserving Potentially Relevant Information, no Party concedes that such  
2 material is discoverable in this matter, nor does any Party waive any claim of privilege by so  
3 Preserving.

4           12. Nothing in this Order shall preclude the Parties from seeking further relief from or  
5 clarification of the Preservation obligations imposed by this Order; however, prior to doing so  
6 counsel shall meet and confer amongst themselves in a good-faith effort to reach agreement as to  
7 the appropriate scope of any particular Information potentially needing to be Preserved.

8           13. Nothing in this Order shall affect any other obligations of the Parties to Preserve  
9 Information for purposes other than claims brought or defenses asserted in this MDL, such as  
10 pursuant to court order, administrative order, subpoena, statute, or in response to other  
11 anticipated litigation.

12           **IT IS SO ORDERED.**

13 Dated: March 24, 2016

14 

15 \_\_\_\_\_  
16 CHARLES R. BREYER  
17 United States District Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28