



# Emerging Legal Issues

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# Human Trafficking Compliance In Federal Contracting

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# Background of U.S. Slavery Laws

- 1865 - Ratification of 13<sup>th</sup> Amendment Outlaws Slavery and Involuntary Servitude.
- 2000 – The Trafficking Victims Protection Act (TVPA).
- 2003 - TVPA Reauthorization.



# Newly Enacted Human Trafficking Regulations

- 2012 - Executive Order 13627  
“Strengthening Protections Against  
Trafficking in Persons in Federal Contracts”
- March 2, 2015 – Federal Acquisition Regulation  
“Ending Trafficking in Person”

# Types of Human Trafficking Addressed by New Regulations

1) Commercial Sex

and

2) Forced Labor



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# Industries Impacted by New Regulations



Food and  
Agriculture



Manufacturing



Transportation



Chemicals



Technology



Healthcare



Hospitality



Construction

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# New Regulation Provisions For All Federal Contractors, Agents and Subcontractors

- Prohibits The Use Of **Misleading** or **Fraudulent** Labor Recruitment Practices.
- Prohibits Charging Laborers **Unreasonable** Placement or Recruitment Fees.
- Housing, if Provided, **Must Meet** Host Country Housing and Safety Standards.
- Requires The **Payment** of Return Transportation Costs Upon The End Of Employment.
- Prohibited From **Denying Workers Access** to Their Identity or Immigration Documents.

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# For Certain Contractors and Subcontractors: Compliance Plan & Annual Certification

- Mandated For All Contractors and Subcontractors with Federal Contracts or Subcontracts for Services or Supplies:
  - Acquired Outside the United States  
and
  - The Contract is Valued Over \$500,000

\* Exception for Commercially Available Off-The-Shelf Goods.

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# Elements of a Mandated Compliance Plan

- Be Appropriate to the *Size and Complexity* of the Federal Contract and the *Nature and Scope* of Your Activities.
- Develop an Awareness Program for **Both the Contractor's and Subcontractor's Employees.**

# Elements of a Mandated Compliance Plan

- A Reporting Process for Employees to Report Violations of Anti-Trafficking Policies ***Without Fear of Retaliation.***
- May Only Use Recruitment Companies With Employees ***Trained*** on New FAR Requirements and ***Must Ensure Compliance*** with Recruitment and Wage Regulations.

# Elements of a Mandated Compliance Plan

- **Housing**, If Provided, **Must Meet** Host Country Housing and Safety Standards.
- Must Establish Procedures to Prevent **Subcontractors** and **Agents, At Any Tier**, From Engaging in Trafficking In Persons.
- **Annually Certify** to the Federal Government Your Compliance Plan is in Place and **Contractors, Agents, and Subcontractors and Subcontracts are in Compliance.**



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# Consequences of Non-Compliance

- **Loss of Government Contracts**
- **Fines & Suspension**
- **Civil and Criminal Liability**
- **Whistleblower Claims**
- **False Claims Act Liability**
- **Class Action Exposure**
- **Costumer Boycotts**
- **Negative Publicity and Advocacy Group Pressure**

# Introduction to "Big Data" Use in Agriculture

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# Precision Ag Involves Highly Complex, Multi-Layered, Multi-Directional Data Flows



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# Potential Data Sources

**Sampling of Tissues and Soils (Moisture, Content, Genes)**

Static – SSURGO (Soil Survey Geographic Database), General Aerial Imagery, DEMS  
(Digital Elevation Model/Topography)

**Weather/Climate Data**

**Personal Observation**

**High Resolution Multispectral Images**

**Remote Sensing Technology**

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# Data Collection Tools

- Tractors and other farm machinery
- Satellites
- Ground based sensors
- Unmanned Aerial Systems (Drones)
- Personal / wearable technology (smart phones, Google Glass)



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# Concerned Parties



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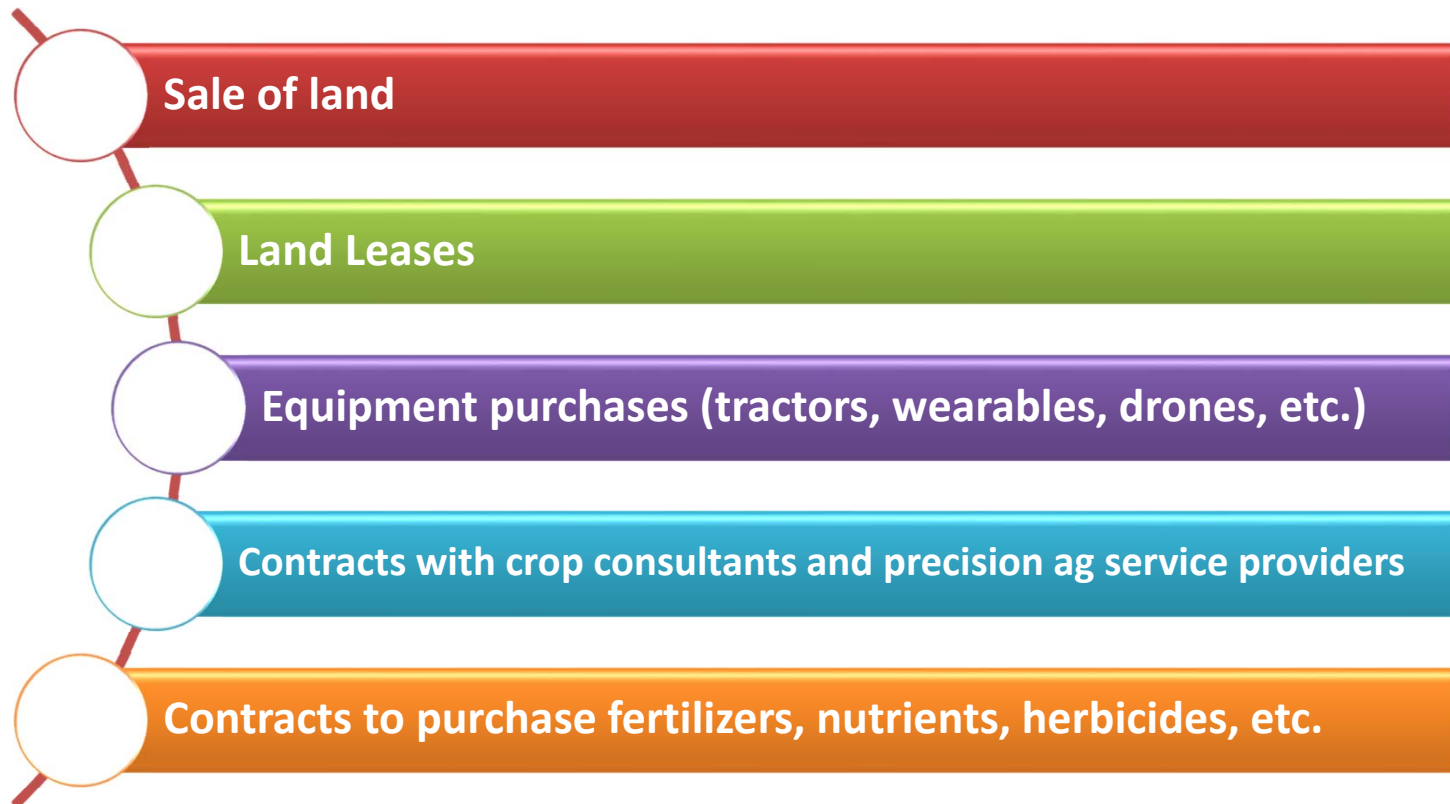
# Prescription Example--FieldScripts

“In 2014, FieldScripts will be offered through local DEKALB® FieldScripts certified seed dealers in the four launch states. Here’s how it works:

- Farmers consult with their FieldScripts certified, local dealer and provide inputs like field boundaries, yield data, and fertility test results on their selected fields.
- The dealer submits the farmer information to Monsanto.
- Monsanto cross-analyzes the farmer information with our extensive knowledge of hybrid performance in different yield environments and generates hybrid recommendations and a variable rate planting prescription unique to each farmer’s field.
- The dealer receives and reviews the farmer’s FieldScripts to ensure accuracy from a local agronomic perspective.
- The dealer delivers FieldScripts to the customer through the FieldView iPad app.
- The farmer connects their iPad to their Seed Sense 20/20 monitor in their planter cab, and the script is executed.
- The dealer provides support through the growing season, including a mid-season check up.
- The dealer captures farmer harvest data and submits it to Monsanto to further optimize next season’s prescription.”
  - <http://www.monsanto.com/products/pages/fieldscripts.aspx>

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# Agreements Need to be Updated to Account For / Anticipate Present and Future Big Data



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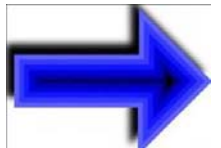
# Agreements Need to be Updated to Account For / Anticipate Present and Future Big Data



# Examples of Some Types of Items Contracts Should Address

- **Basic Key Contract Language:**

- ☐ Who “owns” the data (farmer, landowner, service provider(s))
- ☐ Who “owns” collective data
- ☐ What types of data are covered (soil, weather, applications, pests, water flows, genetic, etc.)
- ☐ What data can and can’t be used—proper consents and in what circumstances can data be withheld

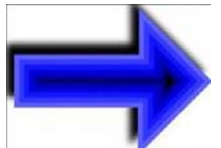


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# Examples of Some Types of Items Contracts Should Address

- **Basic Key Contract Language:**

- ☐ What data can and can't be used for
- ☐ Data access—what guarantees are provided?
- ☐ What data can and can't be shared and with whom (NDAs, subpoenas and related notice provisions)
- ☐ Term and termination rights

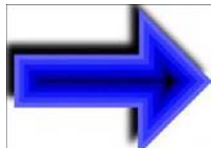


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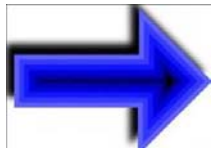
- ☐ What happens to data upon termination
- ☐ Can data be transferred/portability
- ☐ Risks/indemnities—who assumes liability for mistakes, data breach or release, data corruption and error, misuse (like market manipulation) etc.



# Examples of Some Types of Items Contracts Should Address

- **Special Contract Issues for Consideration:**

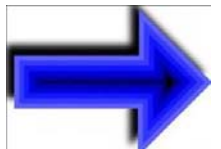
- ☐ Equipment obligations—what is needed to handle data
- ☐ Privacy/security protection obligations
- ☐ Licenses needed for software/who owns software downloads/NDAs associated with software
- ☐ Who is responsible for any regulatory/compliance issues



# Examples of Some Types of Items Contracts Should Address

- **Special Contract Issues for Consideration:**

- ☐ How is data handled if anyone in the data chain ceases operation or goes bankrupt
- ☐ Protections against legal misuse (antitrust, criminal extortion, disclosure of economically sensitive trade secrets to foreign governments, etc.)
- ☐ Data retention policies/responsibility
- ☐ Information labeling requirements (“confidential”)

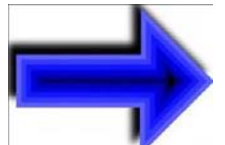


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# Examples of Some Types of Items Contracts Should Address

- **Special Contract Issues for Consideration:**
  - ☐ Control of personnel/confidentiality requirements
  - ☐ Dispute resolution—ADR, courts, availability of injunctive relief?
  - ☐ Attorneys' fees/choice of counsel in the event of a dispute



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# Examples of Some Types of Items Contracts Should Address

## ▪ Other Related Issues:

- ☐ Data stream due diligence obligations—check other agreements
- ☐ Permissibility of data coop participation
- ☐ Who is responsible for obtaining and maintaining records re: any certifications, such as UAS pilot certifications
- ☐ Trademark licenses
- ☐ Mergers/acquisitions



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# What If Things Go Wrong — Potential Claims To Consider

## Potential Intellectual Property Claims:

Copyright—  
depend on role in  
establishing and  
protecting data  
formats

Trademark—  
depends on  
nature of  
information taken

Patent—generally  
only available as  
between service  
providers

Trade Secret—in  
most states, must  
meet criteria  
under Uniform  
Trade Secrets Act



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# What If Things Go Wrong — Potential Claims To Consider

Contract Claims

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graph TD; A[Contract Claims] --> B[Computer Fraud and Abuse Act, 18 U.S.C. § 1030]; B --> C[State law claims:]; C --> D[HUSCH BLACKWELL];
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Computer Fraud and Abuse Act, 18 U.S.C. § 1030

State law claims:

Example: Illinois Biometric Information Privacy Act, 740 ILCS 14/

Example: Multiple bills in various states regarding drones and privacy

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# What If Things Go Wrong — Potential Claims To Consider

## Data Security / Data Breach Tort Claims:

Negligence

Unjust Enrichment

Bailment

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# UAS Collection of Environmental Data

Robert F. Wilkinson  
Partner



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# Overview

- Environmental Data
- Regulatory Data Uses
- Environmental Agency Access to Information
- Recommendations

# Environmental Data

- Photographs
- Infrared Data
- Advanced Sensing Technologies

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# Regulatory Data Uses

- Identify Sources of Emissions, Discharges and Disposal
- Compliance With Regulations
  - “Any Credible Evidence”

# Environmental Agency Access to Information

- EPA's Broad Authority to Require Submission of Data
  - Clean Air Act
  - Clean Water Act
  - Resource, Conservation and Recovery Act
- Most States Have Similar Authority

# Recommendations

- Be prepared to respond to a request for information from an environmental agency
  - Access to information
  - Consult with counsel
- Consider what data to collect
  - Necessary data
  - Other data

# Questions?

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# Environmental Consequences of UAS Data Collection

By Robert Wilkinson and Megan Galey on March 20, 2015

The use of unmanned aerial systems (“UAS,” or more commonly drones) to collect data is gaining considerable attention in the agricultural, manufacturing, real estate and other industries. In addition to photographic data, infrared information and other remote sensing technologies are under development and testing. The collected data will provide important and powerful information to provide significant efficiency and improvement of various operations in these industries. Owners and operators of operating sites, including farms, manufacturing sites, raw material and fuel storage, and others should be aware that data collected by UAS may be subject to review by federal and most state environmental agencies and could be used in enforcement proceedings. EPA could also utilize UAS directly, or hire contractors to use UAS, for enforcement investigation purposes.

## **EPA’s Authority to Access Information**

The Clean Air Act (“CAA”), Clean Water Act (“CWA”), and the Resource Conservation and Recovery Act (“RCRA”) give EPA broad authority to mandate monitoring and reporting and collect information from regulated entities.

For the purpose of determining whether any person is in violation of the CAA, EPA may require an owner or operator of an emission source, or any person who EPA believes may have relevant information to maintain and submit various data, records, and reports. EPA’s access to and inspection of documents and records is not limited to documents or records that EPA itself requires to be maintained. EPA may access any records required pursuant to federal or other applicable regulation, or records directly related to purpose of inspection.

Similarly, under the CWA, EPA may require the owner/operator of a point source to establish and maintain records and reports, install monitoring equipment, or sample effluents. Under RCRA, EPA may require anyone who “generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes” to furnish information. Thus, EPA is permitted to request information from past generators as well as parties who may not have been subject to RCRA, but who have actually handled hazardous waste.

The CAA, CWA, and RCRA all stipulate that information obtained by EPA must be made available to the public, unless it fits within the exception for trade secrets.

## **EPA’s Inspection Authority**

The CAA, CWA, and RCRA also provide EPA with a powerful investigatory tool by giving EPA broad authority to inspect and gather information pertaining to regulated entities.

Under the CAA, 42 U.S.C. § 7414(a)(2), the Administrator or an authorized representative may inspect the property of an owner/operator of an emission source. EPA may enter the property, access records, inspect monitoring equipment, and take emissions samples. The statute, however, does not define “authorized representative,” and whether or not private companies under contract with EPA are authorized representatives has been a source of substantial controversy. The CWA and RCRA also provide similarly broad authorizations for EPA to enter a regulated premises.

The concept of an administrative agency flying over industrial complexes or farmland to investigate potential administrative violations is not new. EPA inspectors have used small private planes to look for CAA and CWA violations, such as dirty runoff or manure dumped into a stream, since at least the late 1970s. Such flights have long been permitted under the Supreme Court’s decision in *Dow Chemical Company v. U.S.*, 76 U.S. 227 (1986).

According to EPA, one benefit of the flights is that they are relatively inexpensive. An on-the-ground inspection of a farm might cost \$10,000, whereas an aerial survey from a plane would cost around \$1,000 to \$2,000. Compared to the cost of hiring a commercial pilot to fly over a property, UAS have the added benefit of being even less expensive.

### **What This Means to You**

Congress has provided EPA with very broad authority to gather information under the major environmental statutes that may reasonably be required by the agency to implement and enforce the statutes. Such “other information” could include photographic evidence of unpermitted emissions or discharges, or unpermitted disposal of wastes. As the remote sensing technologies develop, remote data might also be used to identify specific pollutants and waste materials.

Owners and operators of farms, manufacturing operations and other facilities that may be subject to environmental regulation should be aware of the potential use of data that may be collected and be prepared to produce such information if requested or ordered to do so by an environmental regulatory agency.

Husch Blackwell’s environmental attorneys regularly advise clients in all industries on the collection, retention and production of environmental data and the impact of such data on potential enforcement action by the environmental agencies.

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## Food & Ag Law Insights

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## PRECISION AGRICULTURE

Precision agriculture is an evolving and increasingly specialized industry with tremendous benefits for farm and food industries. The technologies are used to support complex farm management decisions related to planting, application of nutrients and fertilizers, seed technologies and pest management, and to trace applications through the entire food chain. Husch Blackwell tracks and monitors the changes and trends that impact the business of farming so we can be ahead of the game, offering clients a deep understanding and high level of direct experience in various aspects of precision agriculture.

Husch Blackwell attorneys provide a full range of precision agriculture law services. Our attorneys are sensitive to the high costs that can be associated with legal services, so in addition to traditional hourly fees, we also offer innovative pricing structures, including flat fee and success fee arrangements.

### Our team can help with:

- Service agreements, including protection and ownership of data
- Data privacy and security audits, systems and training
- Protection of intellectual property (patents, trademarks, copyrights) in the U.S. and worldwide
- Trade secret protection, including audits, training and litigation
- Unmanned aerial systems regulatory compliance and data collection agreements
- Environmental regulatory support, including permits, audits and strategic planning
- Environmental litigation
- Registration and licensing of agricultural inputs, including seed, nutrients and pesticides
- Licensing
- Intellectual property sales and valuation
- Commercial contracting, including equipment parts and sales leasing
- Mergers and acquisitions, including related intellectual property due diligence
- Insurance coverage, including litigation
- Import/export issues, including sensitive technologies
- Monitoring of competitor intellectual property
- Farm management agreements
- Data succession planning
- Data co-ops

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## About Our Firm

Husch Blackwell is an industry-focused, full-service litigation and business law firm with 16 offices across the U.S. and in London. We represent national and global leaders in major industries including energy and natural resources; financial services; food and agribusiness; healthcare, life sciences and education; real estate, development and construction; and technology, manufacturing and transportation.

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