**Section § 382.405: Access to facilities and records.**

## Guidance Q&A

**Question 5: What is meant by the term "as required by law" in relation to State or local laws for disclosure of public records relating to a driver’s testing information and test results?**

**Guidance:** The term "as required by law" in §382.405(a) means Federal statutes or an order of a competent Federal jurisdiction, such as an administrative subpoena. The Omnibus Transportation Employee Testing Act of 1991, and the implementing regulations in part 382, require that test results and medical information be confidential to the maximum extent possible. (Pub. L. 102-143, Title V, section 5(a)(1), 105 Stat. 959, codified at 49 U.S.C. 31306). In addition, the Act preempts inconsistent State or local government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the regulations issued under the Act.

The FMCSA believes the only State and local officials that may have access to the driver’s records under §382.405(d) and 49 U.S.C. 31306, without the driver’s written consent, are State or local government officials that have regulatory authority over an employer’s (motor carrier’s) alcohol and drug testing programs for purposes of enforcement of part 382. Such State and local agencies conduct employer (motor carrier) compliance reviews under the FMCSA’s Motor Carrier Safety Assistance Program (MCSAP) on the FMCSA’s behalf in accordance with 49 CFR part 350.