

CALIFORNIA HORSE RACING BOARD
TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO ADD
RULE 1859.1, OUT-OF-COMPETITION TESTING PROCEDURES AND REQUIREMENTS
RULE 1869, PROHIBITED DRUG SUBSTANCES IN OUT-OF-COMPETITION TESTING
AND TO AMEND
RULE 1858, TEST SAMPLE REQUIRED
RULE 1859, TAKING, TESTING AND REPORTING OF SAMPLES
RULE 1859.25, SPLIT SAMPLE TESTING
RULE 1867, PROHIBITED VETERINARY PRACTICES

The California Horse Racing Board (Board or CHRB) proposes to add and amend the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to add Rule 1859.1, Out-of-Competition Testing Procedures and Requirements, to establish procedures by which the Board will collect out-of-competition test samples, as well as penalties for non-compliance. Specifically, out-of-competition test samples will be collected at the direction of the official veterinarian, the Equine Medical Director, or his/her designee at any time and in any location. Trainers, owners, and their designees are required to disclose the location of all of their horses that are eligible for out-of-competition testing; however, any party may request that their horse be tested in an alternative location. Additionally, trainers, owners, their designee(s), and racing association employees are required to cooperate with persons collecting out-of-competition test samples. Licensees who willfully fail to make a horse available for out-of-competition testing, or who cause interference or obstruction to the sampling process will receive a minimum one-year license suspension, and horses not made available for out-of-competition testing will be placed on the Steward's List for a minimum of 180 days.

The Board also proposes to add Rule 1869, Prohibited Drug Substances in Out-of-Competition Testing, to list all medications, drugs, and other substances that are prohibited from being present in an out-of-competition test sample. The proposed rule will describe exceptions for certain therapeutic medications in cases where specific procedural and reporting requirements are followed by the trainer and/or their veterinarian. Finally, the rule will describe the liability and rights of trainers, owners, and other licensees who have the care and custody of a horse that tests positive for a prohibited substance in an out-of-competition test sample.

The Board also proposes to amend Rule 1858, Test Sample Required, to clarify the Board's authority to collect official blood, urine, and other biological test samples, as well as describe specifically which horses are eligible for out-of-competition testing. Additionally, the proposed amendment will make it a condition of trainers' and owners' licenses that the Board be given consent to collect out-of-competition test samples at any location where an eligible horse is present.

The Board also proposes to amend Rule 1859, Taking, Testing and Reporting of Samples, to make minor technical changes to existing language that ensures out-of-competition testing procedures do not conflict with existing official test sample collection requirements.

The Board also proposes to amend Rule 1859.25, Split Sample Testing, to extend the same split sample process and rights currently in place for post-race testing to licensees who have a horse in their custody that test positive for a prohibited substance in an out-of-competition test sample.

Finally, the Board proposes to amend Rule 1867, Prohibited Veterinary Practices, to add a number of medications and drug substances to the current prohibited list, and extend the regulation's application to substances detected in out-of-competition test samples.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, May 24, 2018**, or as soon after that as business before the Board will permit, in the **Finish Line Room at Santa Anita Park Race Track, Baldwin Terrace Room, 285 West Huntington Drive, Arcadia, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on May 7, 2018**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

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AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440, 19562, 19577, 19580, and 19582, Business and Professions Code. Reference: Sections 19401, 19420, 19440, 19577, 19580, 19581, 19582, and 19583, Business and Professions Code; Section 603, Evidence Code; and Sections 337f, 337g and 337h, Penal Code.

Business and Professions Code sections 19420, 19440, 19562, 19577, 19580, and 19582 authorize the Board to adopt the proposed regulatory additions and amendments, which would implement, interpret or make specific sections 19401, 19420, 19440, 19577, 19580, 19581, 19582, and 19583, Business and Professions Code; Section 603, Evidence Code; and Sections 337f, 337g and 337h, Penal Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19401(a) explains that it is the intent of the Horse Racing Law to allow pari-mutuel wagering on horse races while assuring protection of the public. Business and Professions Code section 19420 states that the Board has jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in California. Business and Professions Code section 19583 states that every veterinarian who treats a horse within the inclosure shall report the details of such treatment to the official veterinarian in writing.

The Board proposes to add Rule 1859.1, Out-of-Competition Testing Procedures and Requirements, Rule 1869, Prohibited Drug Substances in Out-of-Competition Testing, and to amend Rule 1858, Test Sample Required, Rule 1859, Taking, Testing and Reporting of Samples, Rule 1859.25, Split Sample Testing and Rule 1867, Prohibited Veterinary Practices to bring the CHRB's regulatory scheme in line with the recommendations and research of the Racing Medication Testing Consortium (RMTC)¹ and the Association of Racing Commissioners International (ARCI).² These organizations recently developed model rules and prohibited substance lists for out-of-competition testing that are intended to enhance the integrity of horse racing by controlling which medications race horses are administered while training. While the CHRB's current regulations restrict those medications that may be present in a horse during a race, they are generally silent as to which medications may or may not be used during training (i.e. when the horse is out-of-competition). Although many medications have legitimate therapeutic uses, others can have performance enhancing effects that give horses an unfair advantage when racing.

Until now, CHRB's drug testing efforts have focused almost exclusively on monitoring and restricting substances that are physically detectable in a horse immediately after a race. Although this has effectively curtailed the use of performance enhancing/altering substances immediately prior to a race, it does little to address the issue of substances that enhance performance long after they have been

1. The RMTC strives to develop and promote uniform rules, policies and testing standards at the national level; coordinate research and educational programs that seek to ensure the integrity of racing and the health and welfare of racehorses and participants; and to protect the interests of the racing public. The RMTC was founded in 2001 by representatives of a broad spectrum of racing-related groups who participated in an industry effort to determine potential consensus points on the most basic elements of a uniform national medication policy for racehorses. The RMTC is incorporated as a 501(c)(3) charitable organization with both scientific and educational purposes. It is governed by a board of directors consisting of 24 industry stakeholder groups.

2. The ARCI is composed of the governmental regulators of horse and greyhound racing in the United States, Canada, Mexico, Jamaica, and Trinidad-Tobago. ARCI collaborates with other racing industry organizations who share its common goal of ensuring integrity in racing. ARCI is a not-for-profit trade association with no regulatory authority. Its members individually possess regulatory authority within their jurisdictions and solely determine whether or not to adopt ARCI recommendations on policies and rules.

eliminated from the horse's body. For example, anabolic steroids, which have valid therapeutic uses, can also have muscle building side effects. Therefore, even after the steroid completely clears a horse's system, the horse may still have enhanced muscle mass that it could not have naturally developed without the assistance of the steroid. Accordingly, the CHRB seeks to better control and restrict medications used while horses are not in competition so as to ensure greater fairness and safety in California racing.

The proposed addition of Rule 1859.1, Out-of-Competition Testing Procedures and Requirements, will establish procedures by which the Board will collect out-of-competition test samples, as well as penalties for non-compliance. Specifically, out-of-competition test samples will be collected at the direction of the official veterinarian, the Equine Medical Director, or his/her designee at any time and in any location. Trainers, owners, and their designee(s) are required to disclose the location of all of their horses that are eligible for out-of-competition testing; however, any party may request that their horse be tested in an alternative location. Additionally, trainers, owners, their designee(s), and racing association employees are required to cooperate with persons collecting out-of-competition test samples. Licensees who willfully fail to make a horse available for out-of-competition testing, or who cause interference or obstruction to the sampling process will receive a minimum one-year license suspension, and horses not made available for out-of-competition testing will be placed on the Steward's List for a minimum of 180 days.

The proposed addition of Rule 1869, Prohibited Drug Substances in Out-of-Competition Testing, will define those drugs, substances, doping agents, and medications that are prohibited from being present in an out-of-competition test sample. Specifically, anabolic androgenic steroids will be prohibited unless the anabolic agent has been approved by the United States Food and Drug Administration (FDA), is administered pursuant to a valid veterinary prescription, and is reported to the Official Veterinarian on CHRB-60 (Rev. 7/15), Trainer Medication Report. Additionally, horses receiving permitted anabolic steroid treatments will be required to remain on the Veterinarian's List for a minimum of six months, and until such horse is declared raceably sound and in fit physical condition to exert its best effort in a race. Also prohibited will be: selective androgen receptor modulators, tibolone, and zeranol; Erythropoietin-Receptor agonists; Hypoxia-inducible factor stabilizers (except out-of-competition blood samples may contain cobalt in an amount that does not exceed 50 nanograms per milliliter); Chorionic Gonadotropin and Luteinizing Hormone and their releasing factors; Corticotrophins and their releasing factors (except adrenocorticotrophic hormone (ACTH) may be used in a horse that is out-of-competition, provided that the substance is approved by the FDA, is administered pursuant to a valid veterinary prescription, and is reported to the Official Veterinarian on CHRB-60 (Rev. 7/15), Trainer Medication Report); Beta-2 agonists, including all optical isomers (except clenbuterol and albuterol may be used in a horse that is out-of-competition, provided that the administration is pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division); aminoglutethimide, anastrozole, androsta-1,4,6-triene-3,17-dione (androstatrienedione), 4-androstene-3,6,17 trione (6-oxo), exemestane, formestane, letrozole, and testolactone; raloxifene, tamoxifen, and toremifene; clomiphene, cyclofenil, and fulvestrant; myostatin inhibitors; activators of the AMP-activated protein kinase, Peroxisome Proliferator Activated Receptor δ (PPAR δ) agonists, insulins, trimetazidine, Thyroxine, and thyroid modulators/hormones containing T4 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof (except Thyroxine (T4) will not be considered a prohibited substance, and altrenogest will not be considered a prohibited substance in fillies and mares, provided that such treatments are made pursuant to a valid veterinary

prescription, and both the administrations and prescriptions are carried out in accordance with all rules and regulations in this division); desmopressin, furosemide, plasma expanders, probenecid, torsemide, acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, etacrynic acid, indapamide, metolazone, spironolactone, thiazides, triamterene, trichlormethiazide, vasopressin receptor antagonists, and vaptans (except furosemide and trichlormethiazide may be used in a horse that is out-of-competition, provided that the administration is pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division). Additionally, any of the diuretics mentioned above may be administered in an emergency situation in order to safeguard the health of the horse so long as the substance is administered pursuant to a valid veterinary prescription, and is reported to the Official Veterinarian by the trainer on CHRB-60 (Rev. 7/15), Trainer Medication Report, or by the treating veterinarian on form CHRB-24 (Rev. 7/15), Veterinarian Report, within 24 hours of the administration. Otherwise, any substance not prohibited by this regulation is permitted for use when a horse is out-of-competition, provided such substance has been approved by the FDA for use in the United States, and is prescribed and administered in accordance with all applicable federal and state laws and regulations, including all CHRB rules and regulations.

Additionally, proposed Rule 1869 will establish a presumption that a prohibited drug substance detected in an official out-of-competition test sample is prima facie evidence that the trainer and/or any other licensee responsible for the care of the horse has been negligent in the care of the horse, and is also prima facie evidence that the drug substance has been administered to the horse. Furthermore, the proposed rule will make the trainer the absolute insurer of horses under their care within a licensed inclosure, and the owner the absolute insurer of horses they own located outside of a licensed inclosure when not in the care of another CHRB licensee. Finally, the proposed rule will make the defenses in CHRB Rule 1888, Defense to Trainer Insurer Rule, available to anybody charged with violating this proposed regulation, and will also apply the same penalty guidelines as described in Rule 1843.2, Classification of Drug Substances, and Rule 1843.3, Penalties for Medication Violations.

The proposed amendment to Rule 1858, Test Sample Required, will add a new subsection (b) to explain that the Board may take official blood, urine or other biological samples from horses, in accordance with Rules 1859 and 1859.1, to enhance the ability of the Board to enforce its medication and anti-doping rules at any time or date. The amendment will further revise new subsection (c) to expand horses eligible for testing (out-of-competition or otherwise) to include any horse under the care or control of a licensed trainer, or owned by a licensed owner. The amendment also explains that a horse is “out-of-competition” when it is not entered in a race as defined in this Article, and otherwise prohibits testing of weanlings, yearlings, and horses no longer engaged in racing that are outside of the inclosure and not entered in a Board-authorized horse sale. Finally, the proposed amendment states that as a condition of licensure, persons holding trainer and owner licenses shall be deemed to have given consent for the Board to access any location, whether inside or outside of a licensed inclosure, where a horse eligible for testing may be found for the purpose of collecting official out-of-competition test samples. The proposed amendment further explains, however, that such consent does not permit the Board to search surrounding premises when collecting out-of-competition test samples.

The proposed amendment to Rule 1859, Taking, Testing and Reporting of Samples, specifies that all official test samples are to be “biological” in nature, and also makes an exception to the requirement that samples must be collected in a Board-approved detention area for out-of-competition test samples.

Finally, the proposed amendment allows for test samples to be witnessed, confirmed or acknowledged by owners of horses, in addition to their trainers.

The proposed amendment to Rule 1859.25, Split Sample Testing, extends the same split sample process and rights currently in place for post-race testing under the regulation to licensees who have a horse in their custody test positive for a prohibited substance in an out-of-competition sample.

The proposed amendment to Rule 1867, Prohibited Veterinary Practices, adds the following medications and drug substances to the current prohibited list: venoms or derivatives thereof, aminoimidazole carboxamide ribonucleotide (AICAR), hemopure, Myo-Inositol Trispyrophosphate (ITPP), oxyglobin, and thymosin beta. It also makes an exception for platelet rich plasma and autologous conditioned plasma under the general prohibition against growth hormones and analogs, so long as they are administered pursuant to a valid veterinary prescription and are reported to the Official Veterinarian by the trainer on CHRB-60 (Rev. 7/15) (Trainer Medication Report). Additionally, the proposed amendment extends Rule 1867's application to prohibited substances detected in out-of-competition test samples.

FORMS INCORPORATED BY REFERENCE

- 1) Form CHRB-24, Veterinarian Report, revised 07/15
- 2) Form CHRB-60, Trainer Medication Report, revised 07/15

The proposed amendment to Rule 1867 and addition of Rule 1869 will incorporate by reference CHRB-24, Veterinarian Report (Revised 07/15), and CHRB-60, Trainer Medication Report (Revised 07/15), as it would be cumbersome, unduly expensive or otherwise impractical to publish these documents in the California Code of Regulations.

Form CHRB-24, Veterinarian Report (Revised 07/15), will be used by licensed veterinarians to report to the Official Veterinarian details of diuretic administrations made in emergency situations as described in Rule 1869(a)(13)(B). Under the proposed regulations, either the treating veterinarian or the trainer will need to report the administration to the Official Veterinarian within 24 hours. Under existing regulations, veterinarians treating horses within the inclosure already have to report all medication prescriptions and administrations to the Official Veterinarian on this form, and therefore this provision is consistent with other CHRB rules. If the emergency administration occurs outside of the inclosure, however, the trainer then will be responsible for reporting the administration on Form CHRB-60.

Form CHRB-60, Trainer Medication Report (Revised 07/15), will be used by licensed trainers to report each administration of platelet rich plasma and autologous conditioned plasma, anabolic androgenic steroids, adrenocorticotrophic hormone (ACTH), and emergency diuretic treatments given to horses in their care to the Official Veterinarian. The form includes fields for the name of the horse, name of the trainer, type of medication administered, and date and time of treatment so that the Official Veterinarian may properly identify all horses within the inclosure that have been administered these substances.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed addition of Rules 1859.1 and 1869, and the proposed amendments to Rules 1858, 1859, 1859.25, and 1867, will substantially enhance the integrity and fairness of California horse racing by more effectively monitoring and controlling the use of medications in race horses when they are out-of-competition. Currently, the CHRB's drug enforcement efforts focus almost exclusively on restricting substances that are physically detectable in a horse immediately after a race. Although this has effectively curtailed the use of performance enhancing/altering substances immediately prior to a race, it does little to address the issue of substances that enhance performance long after they have been eliminated from the horse's body. While the CHRB regularly tests horses that are out-of-competition, it presently has no recourse when a substance is detected that is a known performance enhancer. Accordingly, these proposed regulatory changes will allow the CHRB to affirmatively restrict certain medications and drug substances in race horses that are intended to compete but not currently entered for a specific race (i.e. horses that are "out-of-competition").³

Such a change will first and foremost benefit the health and welfare of the horse. By giving the CHRB a mechanism to prosecute trainers, veterinarians, and/or owners who administer non-therapeutic medications or other drug substances to horses that are out-of-competition, the Board will be able to deter doping schemes that may harm the horse. A number of the substances prohibited under the proposed rules can have side effects that negatively impact the health of the horse.⁴ By explicitly banning such substances—and attaching a penalty in those instances where the substance is detected in an out-of-competition test sample—the Board will further curtail use of such drugs.

The proposed changes will also benefit the wagering public because out-of-competition testing will further eliminate the chance that a horse will unnaturally and/or unlawfully have its performance enhanced during a race due to prior doping. This will help ensure that the public is wagering on the merits of the horses' natural abilities, and not being deceived by the improper and/or illicit use of performance enhancing drug substances.

Finally, the proposed changes will benefit the horse racing industry by enhancing the sport's integrity and perception. By expanding the CHRB's role in monitoring and restricting medication use in race horses, both the participating licensees and the public will have greater confidence in the fairness and safety of California racing, which in turn may grow viewership and wagering. Accordingly, these amendments will benefit the health, safety and welfare of horses, licensees, and the wagering public.

CONSISTENCY EVALUATION

During the process of developing the regulation and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that the regulation is neither inconsistent nor incompatible with existing state regulations.

3. Pursuant to current CHRB regulations, a horse is not entered to race (i.e. in-competition) until 48 hours before the race is actually run. Therefore a horse tested three days before it runs is still considered "out-of-competition."

4. For example, auto-immune anemias associated with erythropoietin receptor agonists has been documented in horses. The World Anti-Doping Agency (WADA) issued a warning to athletes pointing out pre-clinical trials of the peroxisome proliferator-activated receptor agonist "GW501516" were halted over serious toxicity issues.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed addition of Rules 1859.1 and 1869, and the proposed amendments to Rules 1858, 1859, 1859.25, and 1867 will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

- ARCI Model Rules of Racing – Version 8.1 (revised July 2017), pgs. 258-265, 284-288, 416-425, and 443-447.
- World Anti-Doping Agency – The 2014 Prohibited List International Standard– (2014 Version 2.0)

Cost impact on representative private persons or businesses: none.

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

RESULT OF ECONOMIC IMPACT ANALYSIS

The proposed addition of Rules 1859.1 and 1869, and the proposed amendments to Rules 1858, 1859, 1859.25, and 1867 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California. The proposed regulatory changes promote the safety and welfare of race horses in California by implementing a mechanism for the CHRB to affirmatively monitor and restrict medications and drug substances in horses that are intended to compete but not currently entered for a specific race. Such a program not only protects the horses, but also protects their riders and the wagering public. Furthermore, an effective out-of-competition testing program will further enhance the integrity of horse racing in California, which in turn may grow viewership and wagering. An increase in wagering will have a positive economic impact on the industry by increasing handle, which in turn increases purses and commissions.

Effect on small businesses: none. The proposed addition of Rules 1859.1 and 1869, and the proposed amendments to Rules 1858, 1859, 1859.25, and 1867 do not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
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E-mail: haroldc@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden, Manager
Policy, Regulations and Legislation
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Philip Laird, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulation should be sent to the attention of Philip Laird at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS:

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Philip Laird at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.