Regulatory Impact Statement for 12 NYCRR §§ 300.7(c), 300.9, 300.13(d), 300.18(f), 325-4.6(c), 326-1.5(b), 326-2.7, 330.4(b), 340.4(b) and 345.4(b).

1. Statutory Authority:

The Workers' Compensation Board (hereinafter referred to as Board) is authorized to amend 12 NYCRR §§ 300.7(c), 300.9, 300.13(d), 300.18(f), 325-4.6(c), 326-1.5(b), 326-2.7, 330.4(b), 340.4(b) and 345.4(b). Workers' Compensation Law (WCL) §117(1) authorizes the Board to adopt reasonable rules consistent with and supplemental to the provisions of the WCL and Labor Law. It also authorizes the Chair of the Board (Chair) to make reasonable rules consistent with the provisions of the WCL and Labor Law.

In addition to the general authority to promulgate regulations, the Board is specifically authorized to amend the following regulations: 12 NYCRR §325-4.6(c) [§ 13-c(3)(h) authorizes the Chair to adopt rules and regulations for the authorization and continued supervision of medical centers, and § 13-c(4)(h) authorizes the Chair to adopt rules and regulations for the authorization and continued supervision of hospitals and health maintenance organizations]; 12 NYCRR §§326-1.5(b) and 2.7 [WCL §13-aa(4) authorizes the medical appeals unit to adopt rules and regulations to govern its own proceedings]; 12 NYCRR §330.4(b) [WCL §13-m (2) authorizes the Chair to promulgate rules governing the charges and fees for psychological care, WCL §13-m (7)(b) authorizes the Board to promulgate rules governing the interest charges due for a psychologist's bill which is due and owing, and WCL §13-m (9) authorizes the Chair to promulgate rules governing the procedure to be followed by those rendering psychological care]; 12 NYCRR §340.4(b) [WCL §13-k (2) authorizes the Chair to promulgate rules governing the charges and fees for podiatry care, WCL §13-k (6) authorizes the Board to promulgate rules governing the interest charges due for a podiatrist's bill which is due and owing, and WCL §13-k (8) authorizes the Chair to promulgate rules governing the procedure to be followed by those rendering podiatry care]; and 12 NYCRR §345.4(b) [WCL §13-l (2) authorizes the Chair to promulgate rules governing the charges and fees for chiropractic care, WCL §13-l (6) authorizes the Board to promulgate rules

governing the interest charges due for a chiropractor's bill which is due and owing, WCL §13-l (8) authorizes the Chair to promulgate rules governing the procedure to be followed by those rendering chiropractic care].

2. Legislative objectives: The proposed amendments to 12 NYCRR §§ 300.7(c), 300.9, 300.13(d), 300.18(f), 325-4.6(c), 326-1.5(b), 326-2.7, 330.4(b), 340.4(b) and 345.4(b) are in accordance with the legislative purpose of conducting accurate and fair hearings, ensuring that all parties are afforded due process and preserving the integrity of the hearing process. Alternative and additional means of recording hearings, such as electronic recording devices, will ensure that all parties receive accurate, impartial, timely and fair hearings. In addition, alternative means of recording will assist the Board in ensuring that the hearings are conducted in the utmost professional and ethical manner. This will assist the Board in maintaining the integrity of the hearing process.

3. Needs and benefits: The purposes of the proposed rule are to 1) ensure that future hearings are conducted accurately and expeditiously; 2) ensure that the Board always has reliable means of recording hearings; 3) explore opportunities to use technology to simultaneously record and incorporate the verbatim content of hearings into the Board's electronic files; and 4) enable the Board to better evaluate and monitor the conduct of its hearings and all the parties and participants in that process. The Board would be able to meet its stated objectives if it had the flexibility to determine the appropriate means to record hearings. Presently, 12 NYCRR §§ 300.7(c), 300.9, 325-4.6(c), 326-1.5(b), 326-2.7, 330.4(b), 340.4(b) and 345.4(b) require that all hearings be conducted using stenographic recordings. The Board will become more efficient in conducting hearings and resolving cases if alternative means for recording hearings were permitted.

Currently, the Board utilizes stenographic recordings exclusively in all hearings. Seventy-three percent (73%) of all Board cases require a hearing which in turn requires a verbatim reporter to be present. Of the seventy-three percent (73%) only three and one-half percent (3.5%) require stenographic transcription of the hearing minutes. In other words, nearly seventy percent (70%) of the verbatim reporters' work at hearings is

never transcribed. This is an inefficient and expensive way to record hearings. Verbatim reporters spend approximately seventy percent (70%) of their work time recording hearings that will never be transcribed and only (30%) of their work time transcribing the hearing minutes and performing other job-related duties.

Over the past several years, the Board has had difficulty hiring and retaining qualified verbatim reporters to meet the demand. The shortage of verbatim reporters was so severe that the Department of Civil Service granted the Board the ability to conduct the exam on a decentralized basis. In 2002, verbatim reporters were upgraded and received an increase in salary. Additionally, verbatim reporters are permitted to supplement their state wages by charging parties a per page fee for transcriptions of Board hearings and working for parties on their own time taking depositions of medical witnesses in Board related cases. In spite of all this, verbatim reporters elect to leave the Board for positions at the Office of Court Administration when they have gained the required experience. Due to shortages, the Board has been forced in certain locations to schedule calendars of hearings which are not trials. The purpose of no-trial hearing calendar is that if there is no verbatim reporter available, the Board can more easily cancel the calendar if necessary. The only other alternative is to hold the hearing without a verbatim reporter, but if the decision of the Workers' Compensation Law Judge is appealed, there will be no transcript of the hearing for the Board Panel to review. Currently, conducting a hearing without a means to record it stenographically violates the regulations. Further, such a situation makes it impermissible for the Board Panel to render a decision and will result in delay. Alternative and additional means of recording hearings, such as electronic audio and video devices, would supplement the existing verbatim reporter staff and provide the Board with much needed flexibility in scheduling and conducting hearings. If the Board had the ability to conduct hearings without verbatim reporters being present, there would be no need to cancel hearings or contemplate holding them without verbatim reporters, which necessarily would prevent delays and difficulties in ensuring timely resolution of claims. Further, when cases are cancelled it not only delays the resolution of a case, but it also creates backlogs of cases to be heard. With additional

means of recording proceedings, the Board can examine whether proceedings, such as conciliation meetings, should be recorded.

Electronic recording devices will ensure that the hearing record is accurate and complete. Such devices will record each and every word spoken during the course of the hearing, including off-the-record discussions. Electronic recording will ensure that all exhibits have been properly identified and submitted into evidence and all arguments have been recorded, which will benefit the parties, attorneys, representatives and judges, and result in a fair and just hearing.

Electronic recording devices would provide the Board with the opportunity to hear or observe first hand the conduct of the hearings. In the past, the Board has received complaints regarding the proceedings, judges, representatives, attorneys, claimants and witnesses. The Board has encountered difficulties in monitoring and evaluating hearings that utilize a stenographic record. An obvious problem is attempting to gauge the tone and inflection of a hearing participant who has allegedly been disruptive during the hearing . Another problem arises when discussions occur off-the-record that affect the case and the individuals involved have different recollections of what transpired. Unlike a stenographic record, electronic recording devices would afford the Board with the ability to accurately monitor a hearing.

Electronic recording would provide the Board with flexibility in storing and transmitting the hearing record to parties requesting copies. For example, if the Board utilized digital technology to record a hearing, the record could be electronically transmitted to the parties. Such a record could be available almost immediately after the conclusion of the hearing, thereby reducing any delays. Due to the time verbatim reporters spend on calendar, delays in deciding appeals occur because of the time it takes verbatim reporters to transcribe the minutes of the hearing. In cases which are appealed, the Board would have the option to listen or view the electronic recording of the hearing or if necessary request that a transcript of the hearing be prepared from the

electronic recording. At the present time, this is not possible because the verbatim reporter's notes of a hearing are only understandable by the verbatim reporters.

4. Costs:

a) There are no projected costs to regulated parties who may be affected by the proposed regulation. However, there may be savings to regulated parties since, depending on the technology used, the cost of the record may be less than the per page fee currently charged by verbatim reporters.

b) It is estimated that the cost of installing electronic recording devices will be $5,000.00 per unit for each hearing part. At the present time, the Board has not determined the number of electronic recording devices which may be installed or a time frame that the installation will be performed. It is the Board's plan to install alternative means of recording on an as needed basis over time.

c) The Board has based its preliminary estimates on researching products initially through the internet and speaking with vendors.

5. Local government mandates: The proposed regulation does not impose any mandate, duty or responsibility upon any municipality or governmental entity.

6. Paperwork: The proposed regulation does not impose or require any reporting requirements or additional paperwork on regulated parties.

7. Duplication: There is no duplication.

8. Alternatives: The Board considered not making any changes, however, as discussed above the increasing problem in recruiting and maintaining verbatim reporters means that it would neither be prudent nor practical for the Board to continue utilizing stenographic recordings exclusively in all hearings. The other alternative would be to specifically state the new means of recording hearings, however, that would not allow for flexibility and the Board has not decided if there is just one correct or best means of recording hearings.

9. Federal standards: There are no applicable federal standards which address the standards contained in the proposed regulation.

10. Compliance schedule: The proposed regulation does not require compliance by regulated parties. The proposed regulation has a negligible impact on parties appearing before the Board.