The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

   Please include the key provisions of the regulation as well as any proposed amendments.

   The purpose of this chapter 4123:1-1 of the Administrative Code is to provide safety for life, Limb, and health of employees of an employer who has possession of an elevator through ownership, lease, or other property right under which said employer has continuous control of and responsibility for the operation of the elevator in the state of Ohio.
The rules of Chapter 4123:1-1 are due for five-year rule review under Section 119.032 of the Revised Code. The rule review date for the rules is October 1, 2019. BWC performed a five-year rule review of the rules in 2014, at which time BWC amended three of the rules and filed two without changes. Legal Operations reviewed the content of the rules and have identified the changes to the rules indicated below.

**Amended rules:**
- 4123:1-1-01 Scopes and definitions.
- 4123:1-1-02 Certificate of operation.
- 4123:1-1-03 Maintenance.

**No Change rules:**
- 4123:1-1-04 Operating characteristics of the elevator.
- 4123:1-1-05 Operation of the elevator.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**
   
   Article II, Section 35 Ohio Constitution and Ohio Revised Code 4121.13.

3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.**
   
   No.

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**
   
   The Specific Safety Requirements (SSR) are particular to the State of Ohio and governed solely by state law.

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**
   
   4123-3-20 Additional awards by reason of violations of specific safety requirements (VSSR), as mandated by the Ohio Constitution and Ohio Revised Code.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**
   
   Reduction in elevator industry injuries and applications for additional awards due to violations of these rules.

**Development of the Regulation**

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CSIPublicComments@governor.ohio.gov

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7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. 

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The review process took place over multiple dates from February through May 2019 by way of personal phone conversations, electronic document review and email correspondence.

**Ohio Department of Commerce, Division of Industrial Compliance**
- Chip Updyke – Chief Elevator Inspector for the Ohio Division of Industrial Compliance

**Private Employers - Elevator Industry Expert**
- Norman Martin – Codes and Standards Officer for Schindler Elevator Corporation and former Chief Elevator Inspector for the Ohio Division of Industrial Compliance.

**International Association of Elevator Consultants (IAEC)**
- Sheila N. Swett – Executive Director, IAEC
- Dennis Rhodes - Senior Sales Engineer - Imperial Electric; Member IAEC

**National Elevator Industry Inc. (NEII)**
- Kevin L. Brinkman, PE, Vice-President, Codes & Safety, National Elevator Industry, Inc.

**International Union of Elevator Constructors**
- John Driscoll – Business Rep for IUEC Local 17, Cleveland (AFL/CIO)

Stakeholder responses received by BWC will be summarized on the Stakeholder Feedback Summary Spreadsheet.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Please see the stakeholders’ feedback grid attached to this BIA.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Side by side cross reference of the Ohio Administrative Code (OAC) 4123:1-1 Specific Safety Requirements and the following publications:

- ASME A.17.1 – 2016 Elevator Safety Standard
- OSHA 1917.116 Elevators and Escalators
- ANSI A17.1 – 2013 Safety Code for Elevators and Escalators
10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn’t the Agency consider regulatory alternatives?

The stakeholders consider the Ohio Administrative Code (OAC) to be consistent with the regulations listed in (9) above, in providing safety for life, limb, and health of employees of an employer who has possession of an elevator through ownership, lease, or other property right under which said employer has continuous control of and responsibility for the operation of the elevator in the state of Ohio.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

*Performance-based regulations define the required outcome, but don’t dictate the process the regulated stakeholders must use to achieve compliance.*

No, because the process for compliance is mandated.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

OAC Chapter 4123:1-1 is the only rule used in adjudication of additional award claims with respect to the elevator industry.

13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The rules will be implemented through the Joint Committee on Agency Rules Review (JCARR) process. Enforcement of the rules is through the Ohio Industrial Commission, as assisted by reports from the BWC Safety Violation Investigation Unit.

**Adverse Impact to Business**

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

   a. Identify the scope of the impacted business community;

      Employers who have possession of an elevator through ownership, lease, or other property right under which said employer has continuous control of and responsibility for the operation of the elevator in the state of Ohio.

   b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

      The adverse impact is identified after thorough investigation of each individual accident claimed to be caused by safety violations in the workplace.

   c. Quantify the expected adverse impact from the regulation.
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

The expected adverse impact from this regulation varies from case to case; therefore, it is not possible to quantify the exact impact of any factors. If an injured worker’s claim results from an employer’s violation of one of these rules, the employer must pay an additional penalty to the injured worker.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

To comply with safety measures for Ohio workers, BWC is mandated under Ohio State Law to develop safety regulations for Ohio employers.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

There are no exemptions or alternative means of compliance, because these rules govern Specific Safety Requirements (SSR). Specific compliance is mandated by statute and rule.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable under OAC 4123-3-20 Additional Awards by reason of Violations of Specific Safety Requirements (VSSR). There are no waiver provisions because these rules protect the safety of employees.

18. What resources are available to assist small businesses with compliance of the regulation?

BWC's Division of Safety & Hygiene (DSH) provides the following resources to obtain compliance, at no direct cost to the employer.

- DSH provides a broad spectrum of services including technical support, library services, educational services and publications.
- Additional resources include our Ohio Safety Congress & Expo, the largest regional safety and health exhibition in the United States and the Ohio safety councils, which provide a forum for occupational safety and health information in local communities.
- Financial resources are available through the SafetyGRANTS program, which provides matching safety intervention grants to eligible employers for the purchase of equipment that may substantially reduce or eliminate workplace injuries and illnesses.
• The **OSHA On-Site Consultation Program** provides consultation services to small employers in high-hazard industries.

• Employer management services blend traditional risk and safety management approaches to controlling workers' compensation costs. Employer management services are dedicated to working with employers to prevent workplace injury and illness claims and to control claims costs if they do occur.

• The employers’ workers' compensation premium includes the cost of our services. As a result, employers invest their safety dollars in prevention.

• The Ohio legislature established DSH as a consultative service to inform, educate and assist employers in loss-prevention activities.
Scope and definitions.

(A) Scope.

The purpose of this chapter of the Administrative Code is to provide reasonable safety for life, limb and health of employees.

The specific requirements of this chapter are requirements for the protection of employees of an employer who has the possession of an elevator through ownership, lease or other property right under which said employer has continuous control of and responsibility for the operation of the elevator. This chapter does not afford protection requirements for employees of elevator manufacturers, installers or inspectors while any such employee is working on premises not in the legal possession of such employee's own employer or for employees of an employer other than the type described in the preceding sentence. The requirements of this chapter apply to all elevators that fall within the term "elevator", as that term is defined in division (A) of section 4105.01 of the Revised Code.

Other chapters of the Administrative Code of specific safety requirements adopted by the Ohio bureau of workers' compensation may be applicable to some or all items related to some types of elevators. To the extent that any such other chapter may conflict with the requirements of this chapter, this chapter shall prevail. Where conflict does not exist, such other chapter shall be deemed to establish specific safety requirements that are supplementary to those contained in this chapter. The requirements of this chapter apply to elevators, whether installed, rebuilt or changed before or after the effective date hereof.

(B) Reserved.
4123:1-1-02 Certificate of operation.

(A) Reserved.

(B) Reserved.

(C) As required by Chapter 4105. of the Revised Code and the rules promulgated thereunder, no elevator of an employer may be operated without a currently valid certificate of operation, issued by the Ohio department of commerce, divisions of industrial compliance or similar authorization issued by a municipality having jurisdiction to do so. In the absence of a currently valid certificate or authorization, an injury or death of an employee incurred by reason of an elevator of the employer shall be presumed to be due to the violation of this specific safety requirement. Such presumption may be rebutted if the employer shows that the absence of the certificate or authorization was due to factors beyond the control of the employer for one or more of the following reasons:

(1) The inspecting authority, with knowledge of the existence of the elevator, had failed to inspect it, which knowledge may be shown by

   (a) Evidence of express notice having been forwarded to the appropriate authority,

   (b) Evidence that a certificate or other authorization had been issued in the past for such elevator,

   (c) Evidence from the files of the appropriate authority or,

   (d) Other competent evidence demonstrating such knowledge by the appropriate authority;

   Provided however, that no such authority shall be found to have had knowledge of the existence of an elevator after the elevator has once been taken out of service, except for maintenance or minor repairs. An elevator operated after having been so taken out of service and before it has been inspected by the appropriate authority shall be a violation of this specific safety requirement and the presumption prescribed above shall apply.

(2) The inspecting authority had inspected the elevator, approved it and the certificate of operation or other authorization had not been received by the employer.

(3) The inspecting authority had inspected the elevator and no deficiency noted in the inspection report contributed to the injury or death.
4123:1-1-03  Maintenance.

(A) Reserved.

(B) Reserved.

(C) During the period covered by the certificate of operation or other authorization (as required by rule 4123:1-1-02 of the Administrative Code) the employer shall maintain the elevator and appurtenances in the following respects:

(1) Hoistways and pits.

   Hoistways and pits shall be kept clean and free of dirt and rubbish and shall not be used for storage purposes. Water shall not be allowed to accumulate in the pits.

(2) Machine rooms.

   Machine room floors shall be kept clean and free from oil or grease. Articles or materials not necessary for the maintenance or operation of the elevator shall not be stored therein. Flammable liquids having a flash point (closed cup) of less than one hundred-forty-four Celsius degrees (one hundred and ten Fahrenheit) shall not be stored or kept in such rooms or spaces.

(3) Escalator pit pans.

   Escalator pit pans shall be kept clean of oil and refuse in order to reduce to a minimum any hazards resulting from accidental ignition.

(4) Tops of cars.

   The tops of cars shall be kept clean and free from oil or grease and shall not be used for storing lubricants. Material not required for the operation of the elevator shall not be stored or carried on top of elevator cars.

(5) Additional requirement for hydraulic elevators.

   Valves and cylinders shall be kept properly packed and the packing maintained to prevent leaks.

(6) Illumination.

   Illuminating switches, fixtures and lights in the machine room, hoistway, pit, elevator car, landing sills and step treads shall be kept in operational condition at all times.

(7) Emergency communication.

   Emergency signals and communication equipment shall be kept in operational condition at all times.

(8) Machine room doors.

   Door closing and locking devices on the machine room or rooms shall be kept in operational condition
(9) Escalator steps, railings and handrails.

Bent or broken teeth on escalator steps and landing combs and broken or substantially damaged handrails shall be repaired or replaced promptly.
(C) Between inspections by or on behalf of the authorized public agency, the employer shall promptly correct any operational deficiency that becomes evident in any one of the following controls, gates, devices or interlocks:

1. The automatic controls that prevent the car from leaving the landing until the car and hoistway doors are closed;

2. The semi-automatic gates that open and close at the hoistway landings;

3. The reopening device activating automatic car and hoistway doors that prevent injury to an employee whose body or limb is interposed between the closing doors or door and jamb;

4. The hoistway door interlocks that operate to remain closed at all times when the car is away from the landing and that operate to prevent the hoistway doors from being opened from outside the hoistway while the car is away from the landing;

5. The leveling device that levels the car at the landing;

6. The devices that prevent movement of the car in either direction while it is standing at the landing;

7. The rubber beading or molding (astragal) on biparting doors.
4123:1-1-05 Operation of the elevator.

(A) Reserved.

(B) Reserved.

(C) No elevator shall be subjected to loads at any time in excess of its rated load as specified on the capacity plate, except where the elevator is designed and installed to carry one-piece loads greater than the rated load. Such one-piece loads may be carried in such elevator pursuant to the design specifications, but the design weight shown on the applicable capacity plate shall not be exceeded.

(D) Loads shall not be carried on top of or beneath the elevator car nor shall loads be carried that protrude over or below the car.

(E) No operator shall be required to remain on the elevator car while freight is being loaded on it.

(F) Freight elevators shall not be used to carry passengers, except employees in the pursuit of their duties and having the permission of the employer.
# Appendix I

## TABLE OF STANDARD MATERIALS AND DIMENSIONS

<table>
<thead>
<tr>
<th>Material moving part at all points</th>
<th>Clearance from Material moving part at all points</th>
<th>Largest mesh at opening allowable</th>
<th>Minimum gauge (U.S. Standard) or thickness</th>
<th>Minimum height of guard from floor or platform level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Woven wire</td>
<td>Under 2.00</td>
<td>3/8.</td>
<td>No. 16</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>2-4.</td>
<td>1/2.</td>
<td>No. 16</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Under 4.</td>
<td>1/2.</td>
<td>No. 16</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>4-15.</td>
<td>2.</td>
<td>No. 12</td>
<td>7</td>
</tr>
<tr>
<td>Expanded metal</td>
<td>Under 4.</td>
<td>1/2.</td>
<td>No. 18</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>4-15.</td>
<td>2.</td>
<td>No. 13</td>
<td>7</td>
</tr>
<tr>
<td>Perforated metal</td>
<td>Under 4.</td>
<td>1/2.</td>
<td>No. 20</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>4-15.</td>
<td>2.</td>
<td>No. 14</td>
<td>7</td>
</tr>
<tr>
<td>Sheet metal</td>
<td>Under 4.</td>
<td>1/2.</td>
<td>No. 22</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>4-15.</td>
<td></td>
<td>No. 22</td>
<td>7</td>
</tr>
<tr>
<td>Wood or metal strip crossed</td>
<td>Under 4.</td>
<td>3/8.</td>
<td>Wood 3/4 Metal No. 16</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>4-15.</td>
<td>2.</td>
<td>Wood 3/4 Metal No. 16</td>
<td>7</td>
</tr>
<tr>
<td>Wood or metal strip not crossed</td>
<td>Under 4.</td>
<td>1/2.</td>
<td>Wood 3/4 Metal No. 16</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>4-15.</td>
<td>1 width.</td>
<td>Wood 3/4 Metal No. 16</td>
<td>7</td>
</tr>
<tr>
<td>Standard guard railing**</td>
<td>Minimum 15</td>
<td></td>
<td></td>
<td>Maximum 20</td>
</tr>
</tbody>
</table>