The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. 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.

Local watershed organizations, school classes and citizen groups are all helping to identify problems and educate community residents about water quality in local streams through the collection of water quality data. In 2003, House Bill 43 was signed into law, requiring Ohio EPA to develop a new surface water quality monitoring system and adopt rules that establish criteria for three levels of credible data related to surface water quality monitoring and assessment. The law also required Ohio EPA to define the purpose for which each level of credible data could be used.

Ohio Administrative Code Chapter 3745-4, initially adopted in 2006, establishes the necessary training and experience needed to submit credible data and requirements for sample collection, analytical methods, data assessment and quality assurance/quality control (QA/QC) procedures for each of the three levels of credible data. The rules also define training and experience requirements for qualified data collections (QDCs); describe sampling protocols and field methods to ensure that the data collection and interpretation are reproducible, scientifically defensible and free from pre-conceived bias; and require Ohio EPA to establish and maintain a computerized database of all credible water quality data submitted to the Agency.

These rules are being amended to coincide with the requirements of the new water quality certified professional (WQCP) program, which the Agency is currently developing. The WQCP program rules should be released for IPR at the same time as the Credible Data Rules. Please note that the Agency completed the five year rule review of the Credible Data program rules in February 2018. This rulemaking is a follow up to the five year rule review and will address some concerns raised during the five year rule review.

At this time, the Agency is considering the following revisions to the Credible Data Program rules:

- Add State Universities to the definition of “state environmental agency”.
- Adding a clause in rules 3745-4-04, -05, and -06 stating that “the timeframe for submission of data may be extended at the Director’s discretion for good cause.”
- Combine HHEI and QHEI stream habitat assessment methods into a single specialty called “Stream Habitat Assessment” for both Level 2 and 3 QDCs.
- Add Salamander Community Assessment as a Level 3 specialty.
• Require HMFEI training and testing as part of the Level 3 Macroinvertebrate assessment.

• Update the Primary Headwater Manual reference in rule 3745-4-06.

The Agency believes these changes will improve the quality of data and the administrative aspects of the program.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

3745-4-02, 3745-4-04, 3745-4-05, 3745-4-06: Ohio Revised Code (ORC) 6111.51.
3745-4-03: ORC 6111.51 and 6111.53.

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.

Not applicable. The Credible Data Program is not a federal requirement.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The Credible Data Program rules in OAC Chapter 3745-4 are consistent with requirements in ORC 6111.50 to 6111.56.

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)?

The public purpose of the Credible Data Program rules is to establish the training and experience that a QDC is required to have for each level of credible data so that the data can be used by others with confidence that the data meets appropriate quality assurance/quality control standards for the specified credible data level.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?
The measure of success will be based upon participation in the program and the quality of data collected and submitted by QDCs.

**Development of the Regulation**

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.*

   Ohio EPA sent electronic notification to DSW’s rulemaking interested party list and posted the Early Stakeholder Outreach fact sheet on DSW’s website on April 11, 2018. The comment period deadline was May 11, 2018. A list of recipients is available upon request.

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

   The Agency received Early Stakeholder Outreach comments from Ohio Coal Association, Midwest Biodiversity Institute, EnviroScience, and The Nature Conservancy in May of 2018. The comments provided during the ESO comment period of this follow up rulemaking are similar to the comments previously provided during the five year rule review rulemaking completed back in February 2018. These previously received comments from the five year rule review helped shape the language that was adopted earlier this year during the five year rule review. This rulemaking is an extension of the previous rulemaking, and thus already incorporates those previous comments received, that are repeated in the Early Stakeholder Outreach comment letters.

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?

   These rules are administrative in nature and are not specifically based on scientific data. However, the rules include scientific methods and procedures for the collection of water quality and biological data. See rule OAC 3745-4-06 for a listing of the references.

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 Agency considered keeping the training and testing for the two stream habitat assessment methods, QHEI and HHEI, separate form one another as they have been in the past, however the Agency has determined that it is appropriate to have these two methods taught together so the qualified data collector can appropriately determine which habitat assessment method is applicable in a scenario where they may encounter a transition from headwater streams to wadable streams. The Agency asserts that this combination, in addition to the new salamander assessment specialty, will allow for higher quality data to be collected.

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.

   The Credible Data Program is voluntary, and the regulations are administrative in nature. In general, the rules are not performance-based. The rules require data collected for specified levels to follow collection and analysis methods stated in the rule to bring consistency and confidence in the sampling results so that the data can be used for the intended purposes.

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

   The Agency was granted statutory authority to oversee the Credible Data Program. Only a review of existing Ohio EPA rules was necessary, and no duplication was found.

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 Agency will put the effective date of the adopted rules one month out from the date of adoption, which provides the Agency time to update web pages and programmatic documents.

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

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.

a. None. The Credible Data Program is a voluntary program. If persons choose to participate, impacted businesses might include environmental consulting firms or entities regulated under the National Pollutant Discharge Elimination System (NPDES) permitting program.

b. None. The Credible Data Program is a voluntary program. As such, we do not believe that impacts from the rules are “adverse.” However, if a person chooses to participate in the program, they might have to: attend recognized training and pass a level specific test, develop a study plan and submit it to the agency for review and approval, conduct sampling in accordance with approved methods and submit the results of the sampling to the Agency through a specified format. The person also has to renew their certification in accordance with the timeframes specified in rule OAC 3745-4-03 to remain a Qualified Data Collector.

c. None. The Credible Data Program is a voluntary program. As such, we do not believe that impacts from the rules are “adverse.” However, if a person chooses to participate in the program, we estimate there to be costs which can vary between levels and specialties. All participants are responsible for training/testing costs. Overall costs of participation include time needed to develop project study plans, lab quality assurance plans, sampling, data analysis, and report writing. Generally, cost will increase as individuals move into higher levels of credible data and cost variability will also range between each respective specialty.

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

Not applicable. The Credible Data Program is a voluntary program. As such, we do not believe that impacts from the rules are “adverse.”

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.
Not applicable. The Credible Data Program is a voluntary program that establishes requirements for three levels of data collection. The requirements, in general, increase from Level 1 to Level 3. Any participant that wants its data to be considered a specific level has to meet the requirements associated with that level regardless of whether or not it is a small business.

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?

The Credible Data Program is a voluntary program. To the extent that a small business were to have a first time paperwork violation under these rules, Ohio EPA would waive administrative fines or civil penalties on that small business for the violation unless the violation were to fall within the exceptions listed in section 119.14(C).

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

To ensure program compliance, numerous resources are available for reference. U.S. EPA has a website with information regarding citizen science data collection programs, located here: https://www.epa.gov/citizen-science. The Division of Surface Water’s Credible Data program web site provides information about the program and citations for additional reference documents, located here: http://epa.ohio.gov/dsw/credibledata/index.aspx. Any questions which can’t be answered by the available resources can be directed towards Jared Burson at Jared.Burson@epa.ohio.gov or (614) 721-8697.