Court of Appeals for the appropriate circuit by October 30, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, addressing the District of Columbia’s good neighbor provision for the 2008 ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

**Dated:** August 21, 2018.

**Cecil Rodrigues,**

** Acting Regional Administrator, Region III.**

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

<table>
<thead>
<tr>
<th>Name of non-regulatory SIP revision</th>
<th>Applicable geographic area</th>
<th>State submittal date</th>
<th>EPA approval date</th>
<th>Additional explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS</td>
<td>District of Columbia</td>
<td>6/13/14</td>
<td>8/31/18, [Insert Federal Register citation]</td>
<td>This action addresses CAA element 110(a)(2)(D)(i)(i).</td>
</tr>
</tbody>
</table>

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart J—District of Columbia**

2. In §52.470, the table in paragraph (e) is amended by adding a new entry for “Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS” after the existing entry for “Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS” to read as follows:

<table>
<thead>
<tr>
<th>§52.470</th>
<th>Identification of plan.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(e) * * * *</td>
<td></td>
</tr>
</tbody>
</table>
correction. NDDH agreed with the EPA’s proposed approval of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO2 NAAQS for the state of North Dakota, asserting that “sources in North Dakota do not significantly contribute to SO2 concentrations in nonattainment or maintenance areas in other states.” NDDH stated that SO2 emissions in North Dakota continue to decrease, specifically noting the shutdown of the coal-fired electric generating unit Stanton Station in 2017, the forthcoming conversion of the University of North Dakota heating plant from coal to natural gas (permit currently under review), and the continued replacement of coal-fired electrical generation by wind electrical generation as a portion of total electrical generation in the state between 2012 and 2017. NDDH also provided 2017 SO2 monitoring design values, showing that these levels continue to be below the 2010 SO2 NAAQS.

Response: The EPA agrees with the state that the 2010 and 2016 SO2 emission levels for North Dakota listed in “Table 1—SO2 Emission Trends” require correction. With regard to the 2016 SO2 emissions, we derived these emissions data from the EPA’s “Air Pollutant Emissions Trends” web page which was updated on March 28, 2018, after the values for Table 1 had been calculated. For this reason, the 2016 SO2 emissions levels and the 2000–2016 SO2 emissions reduction for each state listed in Table 1 of the proposed rule are not consistent with those currently presented on the EPA’s “Air Pollutant Emissions Trends” web page. Therefore, the EPA has recreated “Table 1—SO2 Emission Trends” below.

### REVISED TABLE 1—SO2 EMISSION TRENDS IN TONS PER YEAR

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>118,528</td>
<td>90,577</td>
<td>73,075</td>
<td>41,415</td>
<td>65</td>
</tr>
<tr>
<td>Colorado</td>
<td>115,122</td>
<td>80,468</td>
<td>60,459</td>
<td>25,547</td>
<td>78</td>
</tr>
<tr>
<td>Idaho</td>
<td>34,525</td>
<td>35,451</td>
<td>14,774</td>
<td>10,016</td>
<td>71</td>
</tr>
<tr>
<td>Iowa</td>
<td>265,005</td>
<td>222,419</td>
<td>142,738</td>
<td>56,139</td>
<td>78</td>
</tr>
<tr>
<td>Kansas</td>
<td>148,416</td>
<td>199,006</td>
<td>80,267</td>
<td>18,624</td>
<td>76</td>
</tr>
<tr>
<td>Minnesota</td>
<td>148,899</td>
<td>156,468</td>
<td>85,254</td>
<td>35,480</td>
<td>76</td>
</tr>
<tr>
<td>Montana</td>
<td>57,517</td>
<td>42,085</td>
<td>26,869</td>
<td>18,338</td>
<td>68</td>
</tr>
<tr>
<td>Nebraska</td>
<td>86,894</td>
<td>121,785</td>
<td>77,998</td>
<td>54,934</td>
<td>37</td>
</tr>
<tr>
<td>New Mexico</td>
<td>164,631</td>
<td>47,671</td>
<td>23,651</td>
<td>17,959</td>
<td>89</td>
</tr>
<tr>
<td>North Dakota</td>
<td>275,138</td>
<td>159,221</td>
<td>119,322</td>
<td>58,058</td>
<td>79</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>145,862</td>
<td>169,464</td>
<td>136,348</td>
<td>81,890</td>
<td>44</td>
</tr>
<tr>
<td>South Dakota</td>
<td>41,120</td>
<td>28,579</td>
<td>16,202</td>
<td>3,081</td>
<td>92</td>
</tr>
<tr>
<td>Utah</td>
<td>58,040</td>
<td>52,998</td>
<td>29,776</td>
<td>15,512</td>
<td>73</td>
</tr>
<tr>
<td>Wyoming</td>
<td>141,439</td>
<td>122,453</td>
<td>91,022</td>
<td>51,769</td>
<td>63</td>
</tr>
</tbody>
</table>

The EPA also agrees with NDDH that the 2010 emissions value for North Dakota was incorrect in “Table 1—SO2 Emission Trends.” That value has been corrected in this revised version of the table. The 2010 SO2 emissions levels for all other states, as well as all 2000 and 2005 emissions levels, remain unchanged from those in “Table 1—SO2 Emission Trends” in the proposed rulemaking. The corrected values for North Dakota illustrate an even greater decline in emissions of SO2 than that discussed in the proposed rulemaking. The corrected values in this table are therefore consistent with the EPA’s analysis in its proposed determination that emissions from North Dakota are not in violation of section 110(a)(2)(D)(i)(I).

The EPA notes that North Dakota’s comment refers to “nonattainment or maintenance areas” (emphasis added) as part of its reiteration that sources within the state do not have certain downwind impacts on other states. The EPA has routinely interpreted

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1 As noted at proposal, these values were derived using the EPA’s web page https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data. Specifically, a link on this web page titled “State Average Annual Emissions Trend” connected to a spreadsheet. As shown on the “Read Me” page of this spreadsheet, the “draft state trends” were updated on March 28, 2018. This update has caused the 2016 SO2 emissions levels in the prior iteration of the spreadsheet to change for all states.

Comment: WDEQ expressed support of the EPA’s proposed approval of their SIP as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO2 NAAQS. However, WDEQ disagreed with the EPA’s statement in our proposal that “Wyoming’s analysis does not independently address whether the SIP contains adequate provisions prohibiting emissions that will interfere with maintenance of the 2010 SO2 NAAQS in any other state.” 83 FR 25631. WDEQ asserted that its weight of evidence demonstration for prong 1, “significant contribution to nonattainment,” also adequately addresses the requirements for prong 2, “interference with maintenance.” WDEQ also stated that there were no other 2010 SO2 nonattainment or maintenance areas in neighboring states to address at the time of its submission apart from the Billings, Montana 2010 SO2 maintenance area, which WDEQ addressed in that submission when the

2 The corrected values in this table are discussed in the proposed rulemaking.
area was still designated as nonattainment.²

Response: The EPA disagrees that WDEQ’s analysis of potential impact on the Billings area represents an independent analysis of 110(a)(2)(D)(i)(I) prong 2. WDEQ’s March 6, 2015 submission analyzed Wyoming’s potential impact on the Billings area and the lack of additional nonattainment areas in surrounding states to determine whether the Wyoming SIP meets the requirements of prong 1 and prong 2. However, the court in North Carolina v. EPA, (531 F.3d 896, DC Cir. 2008) was specifically concerned with areas not designated nonattainment when it rejected the view that “a state can never ‘interfere with maintenance’ unless the EPA determines that at one point it ‘contribute[d] significantly to nonattainment.’” 531 F.3d at 910. The court pointed out that areas barely attaining the standard due in part to emissions from upwind sources would have “no recourse” pursuant to such an interpretation. Id. In accordance with the court’s decision and as noted in our proposal, “the EPA interprets CAA section 110(a)(2)(D)(i)(I) prong 2 to require an evaluation of the potential impact of a state’s emissions on areas that are currently measuring clean data, but that may have issues maintaining that air quality, rather than only former nonattainment, and thus current maintenance, areas.” 83 FR 25621. For this reason, Wyoming’s analysis of the Billings area alone would not independently address 110(a)(2)(D)(i)(I) prong 2, based on the EPA’s longstanding interpretation of this provision. Because WDEQ did not conduct such an analysis as part of its weight of evidence, the EPA supplemented the state’s analysis (see proposal at 83 FR 25631) and proposed to find that Wyoming does not interfere with maintenance of the 2010 SO₂ NAAQS in any other state.

With respect to the assertions WDEQ makes in its comments regarding maintenance areas, the EPA does not interpret the reference to “maintenance” under section 110(a)(2)(D)(i)(I) to be limited to maintenance areas. As previously described, this provision requires evaluation of the potential impact of upwind emissions on all areas that are currently measuring clean data, but may have issues maintaining that air quality. Nothing in the CAA limits states’ obligations under section 110(a)(2)(D)(i)(I) to downwind areas that have been formally designated.

III. Final Action

The EPA is approving the following submission as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO₂ NAAQS: Colorado’s July 17, 2013 and February 16, 2018 submissions; Montana’s July 15, 2013 submission; North Dakota’s March 7, 2013 submission; South Dakota’s December 20, 2013 submission; and Wyoming’s March 6, 2015 submission. This action is being taken under section 110 of the CAA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, this action:

• Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
• Is not a significant new use of Federal capital or Federal property as added by the Small Governmental Grants and Loans Act of 1995 (15 U.S.C. 3601 et seq.); and
• Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4); and
• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these SIPs are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control. Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping.
40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:
   Authority: 42 U.S.C. 7401 et seq.

Subpart G—Colorado

2. Section 52.352 is amended by adding paragraph (f) to read as follows:
   § 52.352 Interstate transport.

   (f) Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport SIP regarding 2010 Standards, submitted to EPA on July 17, 2013, and February 16, 2018, for both elements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO2 NAAQS.

Subpart BB—Montana

3. Section 52.393 is amended by adding paragraph (e) to read as follows:
   § 52.1393 Interstate transport requirements.

   (e) EPA is approving the Montana 2010 SO2 NAAQS Infrastructure Certification, submitted to EPA on July 15, 2013, for both elements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO2 NAAQS.

Subpart JJ—North Dakota

4. Section 52.1833 is amended by adding paragraph (h) to read as follows:
   § 52.1833 Section 110(a)(2) infrastructure requirements.

   (h) EPA is approving the North Dakota 2010 SO2 NAAQS Infrastructure Certification, submitted to EPA on March 7, 2013, for both elements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO2 NAAQS.

Subpart QQ—South Dakota

5. Section 52.2170, paragraph (e), is amended by adding table entry XXII. to read as follows:
   § 52.2170 Identification of plan.

   (e) * * *

   * * *


Subpart ZZ—Wyoming

6. Section 52.2620, paragraph (e), is amended by adding table entry (31) to read as follows:
   § 52.2620 Identification of plan.

   (e) * * *

   * * *

   (31) XXXI ................... Interstate transport SIP for Section 110(a)(2)(D)(i)(I) prongs 1 and 2 for the 2010 SO2 NAAQS.