

#### § 528.4

by the authorized representative if, and on such terms as, such certificate would have been issued had there been no mistake limited in its term from the date of issuance to the date of annulment of the annulled certificate.

(c) A certificate may be withdrawn in the public interest by a representative authorized to issue such type of certificate whenever any part of the exemption it provides is no longer necessary to prevent curtailment of opportunities for employment. If appropriate, a more limited replacement certificate may be issued by the authorized representative.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

#### § 528.4 According opportunity to demonstrate or achieve compliance.

Prior to instituting proceedings for withdrawal of a certificate under paragraph (a) of § 528.3, except in cases of willfulness, an area director shall mail a letter to the employer setting forth alleged facts or conduct which may warrant withdrawal of the certificate, and fixing a time and a place for a conference at which the employer shall be accorded an opportunity to show that no cause for withdrawal under § 528.3(a) exists or that compliance has been achieved by paying wages improperly withheld and by taking steps adequate to insure that new cause for annulment or withdrawal will not occur. By written report to the appropriate authorized representative, a copy of which shall be mailed to the employer, the area director shall concisely summarize the conference and shall include conclusions as to whether the employer demonstrated or achieved compliance. If the authorized representative is satisfied that the employer either demonstrated or achieved such compliance, no proceedings shall be instituted under § 528.3(a) for the withdrawal of the certificate.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913), Employment Standards Order 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

#### 29 CFR Ch. V (7-1-12 Edition)

#### § 528.5 Proceedings for withdrawal or annulment.

The representative authorized to withdraw or annul a certificate under § 528.3 shall institute proceedings by a letter mailed to the employer and, where appropriate, to the apprenticeship agency (in the case of apprentice certificates) or the responsible school official (in the case of student-learner certificates), setting forth alleged facts which may warrant such annulment or withdrawal and advising the employer that such an annulment or withdrawal of the scope provided in § 528.7 will take effect at a time specified unless facts are presented which convince the authorized representative that such action should not be taken. The letter shall advise such person, agency, or official of the right to respond by mail or to appear by or with counsel or by other duly qualified representative at a specified time and place. If there is no timely objection to the withdrawal or annulment thus proposed, it shall be deemed effective according to the terms of the letter instituting the annulment or withdrawal proceeding without the necessity of any further action. If objection to the annulment or withdrawal as proposed is made within the specified time the further proceedings shall be as informal as practicable commensurate with orderly dispatch and fairness. Department of Labor investigation files or reports or portions thereof may be considered in such proceedings to the extent they are made available for examination during the proceedings. If objection to the proposed annulment or withdrawal is made by such specified time, the authorized representative shall, after considering all pertinent matters presented, mail a letter to the employer and, where appropriate, to the apprenticeship agency or the responsible school official, setting out that representative's findings of specific pertinent facts and conclusions and that representative's order concerning the proposed annulment or withdrawal. In proceedings instituted for annulment, the order may provide for withdrawal instead of annulment if the proof warrants such withdrawal but fails to support adequately the annulment. Such

an order shall be deemed issued and effective according to its terms when mailed.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

**§ 528.6 Review.**

Any employer and, when appropriate, any apprenticeship agency or responsible school official, who expressed timely objection to the proposed action prior to issuance of an order of annulment or withdrawal may obtain review, limited to the question of whether the findings of fact support the order under the regulations in this part. Application for such review shall be in writing addressed to the Administrator and mailed within 15 days after the order is issued. The Administrator may affirm, modify, or reverse the order, or may remand it for further proceedings. The order under review shall not be stayed in effect pending such review. Any aggrieved person may obtain such review of an order entered in proceedings instituted under paragraph (c) of § 528.3.

[21 FR 5316, July 17, 1956, as amended at 22 FR 5683, July 18, 1957]

**§ 528.7 Effect of order of annulment or withdrawal.**

Except as otherwise expressly provided in such order, any order of annulment or withdrawal under paragraph (a) or (b) of § 528.3 shall be effective to terminate all certifications to which the regulations in this part apply in effect at the establishment where the cause for withdrawal arose or where the annulled certificate had effect. After such annulment or withdrawal, such employer shall be ineligible to obtain or exercise the privileges granted in such a certificate until he satisfies the issuing officer that he will not again give cause for annulment or withdrawal if a certificate is issued.

(Secretary's Order No. 16-75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No 76-2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28469, June 30, 1978]

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