

such other functions as may be desired by the Administrator.

PART 527 [RESERVED]

PART 528—ANNULMENT OR WITHDRAWAL OF CERTIFICATES FOR THE EMPLOYMENT OF STUDENT-LEARNERS, APPRENTICES, LEARNERS, MESSENGERS, HANDICAPPED PERSONS, STUDENT-WORKERS, AND FULL-TIME STUDENTS IN AGRICULTURE OR IN RETAIL OR SERVICE ESTABLISHMENTS AT SPECIAL MINIMUM WAGE RATES

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AUTHORITY: Sec. 14, 52 Stat. 1068, as amended; 29 U.S.C. 214, unless otherwise noted.

§ 528.1 Applicability of the regulations in this part.

The regulations in this part shall govern the annulment or withdrawal of any certificate except a temporary certificate issued pending final action on an application, issued pursuant to parts 519, 520, 521, 522, 523, 524, and 527 of this chapter, and having effect under section 14 of the Fair Labor Standards Act of 1938.

[27 FR 3994, Apr. 26, 1962]

§ 528.2 Definition of terms.

As used in the regulations contained in this part, the term:

- (a) *Withdrawal* shall mean termination of validity of a certificate with prospective effect from the time of the action of withdrawal.
- (b) *Annulment* shall mean withdrawal of a certificate with retroactive effect to the date of issuance.
- (c) *Authorized representative* shall mean: (1) The Assistant Regional Ad-

ministrators for the Wage and Hour Division (who are authorized to redelegate this authority) within their respective regions, and (2) the Caribbean Director of the Wage and Hour Division for the area covered by the Caribbean office.

- (d) *Area director* shall include any area director of the Wage and Hour Division.

(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]

§ 528.3 Withdrawal and annulment of certificates.

- (a) An authorized representative may withdraw a certificate from any employer within that representative's region who, acting under color of any certificate or application for the employment of learners, handicapped workers, student workers, student learners, apprentices, messengers, or full-time students in agriculture, retail, or service establishments, or in institutions of higher education at subminimum wages under section 14 of the act, fails to comply with the limitations in such certificate or otherwise violates the act.
- (b) An authorized representative may annul a certificate affected by mistake in its issuance if the employer knowingly induced or knowingly took advantage of the mistake. Where the employer did not knowingly induce the mistake but knowingly took advantage of it, a new certificate shall be issued 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

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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))

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§ 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]

§ 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

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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