**10:09:03:01.  Terms and conditions for granting waivers.** OSE may waive high performance building standard certification for any of the following circumstances:

 (1)  Twenty or fewer persons will permanently occupy the building in a 24 hour period;

 (2)  A 15-year payback cannot be met as defined in § 10:09:04:01;

 (3)  If the building is listed on the national register of historic places and reasonable justification is given to indicate that achieving a high-performance green building standard will significantly impair the original architectural intent of the building;

 (4)  Less than fifty percent of the total square footage of the building is planned to be renovated within a three-year period; or

 (5)  Extenuating circumstances may include:

 (a)  Special use building projects;

 (b)  Temporary use state building projects; and

 (c)  Other circumstances that may prohibit high performance building construction or to be contrary to the best interest of the State of South Dakota.

 **Source:** 34 SDR 323, effective July 3, 2008; 41 SDR 218, effective June 30, 2015.

 **General Authority:** SDCL 5-14-38.

 **Law Implemented:** SDCL 5-14-34, 5-14-38.