

*The
Saskatchewan
Commercial
Innovation Incentive
(Patent Box)
Regulations*

being

[Chapter S-10.2 Reg 1](#) (effective June 30, 2017).

NOTE:

This consolidation is not official and is subject to House amendments and Law Clerk and Parliamentary Counsel changes to Separate Chapters that may be incorporated up until the publication of the annual bound volume. Amendments have been incorporated for convenience of reference and the official Statutes and Regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the official Statutes and Regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER S-10.2 REG 1

The Saskatchewan Commercial Innovation Incentive (Patent Box) Act

Title

1 These regulations may be cited as *The Saskatchewan Commercial Innovation Incentive (Patent Box) Regulations*.

Definitions

2(1) In these regulations:

“Act” means *The Saskatchewan Commercial Innovation Incentive (Patent Box) Act*;

“eligible cascading”, with respect to an innovation, means goods, services or processes that are:

- (a) developed from the same intellectual property source, in whole or in part, that was included in the original application for which an SCII certificate has been issued and that meet the requirements of section 6; and
- (b) an incremental or generation improvement on the original proposed innovation;

“eligible forking”, with respect to an innovation, means goods, services or processes that represent a significant innovation or change in the features, benefits, application or use in relation to the same intellectual property source, in whole or in part, that was included in the original application for which an SCII certificate has been issued and that meet the requirements of section 6;

“eligible intellectual property” includes;

- (a) patents;
- (b) plant breeders’ rights;
- (c) trade secrets;
- (d) copyright related to computer programs, algorithms and computer science; and
- (e) licences pertaining to any of the intellectual property mentioned in clauses (a) to (d);

“technological readiness level”, with respect to a proposed innovation, means the readiness level, including any remaining activities required to complete its development, with respect to bringing the proposed innovation to the Canadian marketplace, as described in section 3.

(2) In the Act and in these regulations:

“exceptional innovation”, with respect to a proposed innovation, means that the good, service or process possesses any or all of the qualities set out in subsection 3(1);

“proposed innovation” means the combination of eligible intellectual property and the resulting goods, services or processes that is the subject of an applicant’s application.

7 Jly 2017 cS-10.2 Reg 1 s2.

Review of application – scientific eligibility test

3(1) For the purposes of section 6 of the Act, an innovation is an exceptional innovation if it possesses all or any of the following qualities:

- (a) it has no equivalent in the Canadian marketplace;
- (b) it is a substantial advance on the current state of the art, with respect to any comparable good, service or process, in Canada;
- (c) it has unique features and benefits that materially distinguish it from current competitive offerings in the Canadian marketplace to the extent that the innovation has the potential to create a competitive advantage or an entirely new segment of the marketplace.

(2) In providing its opinion to the minister with respect to whether a proposed innovation is an exceptional innovation, the technical assessor shall also consider the technological readiness level of the proposed innovation, as described in subsection (3).

(3) The technical assessor, in considering the technological readiness level of the proposed innovation, shall have regard to whether or not:

- (a) there is a model or prototype of the innovation that represents a near-desired configuration and that model or prototype has been successfully tested in a simulated operational environment or laboratory;
- (b) a prototype of the innovation at the planned operational level is ready for demonstration in an operational environment; or
- (c) the innovation is in its final form, has been proven to work in that form and under expected conditions.

(4) For the purposes of section 6 of the Act, January 1, 2017 is the earliest date that may be used for the assessment of an applicant’s commercialization of its proposed innovation with respect to the Canadian marketplace.

7 Jly 2017 cS-10.2 Reg 1 s3.

Economic eligibility test – benchmarks

4(1) The economic growth benchmarks set out in this section are to be assessed on a cumulative basis.

(2) For the purposes of clauses 9(1)(a) to (e) of the Act, the economic growth benchmarks with respect to the innovation are as follows:

(a) the creation and maintenance of 10 net new full-time or full-time equivalent positions in Saskatchewan over any period commencing on or after the day on which the minister provided the notice mentioned in clause 7(a) of the Act to the applicant;

(b) \$10,000,000 in net new capital expenditures in Saskatchewan over any period commencing on or after the day on which the minister provided the notice mentioned in clause 7(a) of the Act to the applicant;

(c) \$3,500,000 in new Saskatchewan corporate income tax paid over any period commencing on or after the day on which the minister provided the notice mentioned in clause 7(a) of the Act to the applicant;

(d) one of the following:

(i) \$3,000,000 in new research and development expenditures made in Saskatchewan over any period commencing on or after the day on which the minister provided the notice mentioned in clause 7(a) of the Act to the applicant;

(ii) \$3,000,000 in research and development expenditures made in Saskatchewan that can be directly attributed to the original proposed innovation;

(iii) \$3,000,000 in combined research and development expenditures as described in subclauses (i) and (ii).

(3) If an applicant intends to request the minister to consider an economic benefit for the purposes of subsection 9(2) of the Act, the applicant must submit to the minister, in writing:

(a) a detailed explanation of the economic benefit the applicant claims;

(b) the expected demonstrable new economic benefits to Saskatchewan resulting from the commercialization of the proposed innovation; and

(c) a detailed explanation with respect to how the economic benefit the applicant claims is to be measured and verified by the minister.

(4) For the purpose of calculating the net new full-time or full-time equivalent positions described in clause (2)(a):

(a) employees who have been transferred to the eligible corporation from a related person or associated corporation are not to be included in the calculation if, in the opinion of the minister, the transfer has not created net new Saskatchewan-based jobs; and

(b) employees who have been converted from independent contractors of the applicant or eligible corporation are not to be included in the calculation if, in the opinion of the minister, the conversion has not created net new Saskatchewan-based jobs.

7 Jly 2017 cS-10.2 Reg 1 s4.

Eligibility for 15-year tax rebate

5(1) For the purposes of subsection 11(3) of the Act, an applicant or eligible corporation must provide evidence satisfactory to the minister that at least 50% of the research and development related to the proposed innovation was conducted in Saskatchewan.

(2) An applicant or eligible corporation mentioned in subsection (1) must provide the information regarding its research and development activities to the minister as part of the information and material that it submits to the minister in accordance with section 8 of the Act.

7 Jly 2017 cS-10.2 Reg 1 s5.

Eligible cascading and eligible forking

6(1) An eligible corporation that has developed a cascading innovation or forking innovation may, before commercializing that innovation, request the minister to determine whether the cascading innovation or forking innovation is an eligible cascading innovation or eligible forking innovation, as the case may be, in accordance with this section.

(2) An eligible corporation that makes the request mentioned in subsection (1) is not required to apply for an SCII certificate pursuant to section 5 of the Act with respect to cascading innovation or forking innovation, but must submit a notice to the minister, in a form acceptable to the minister, at least 120 days before commercializing the cascading innovation or forking innovation, as the case may be, in the Canadian marketplace.

(3) The form mentioned in subsection (2) must include:

(a) a detailed description of the proposed cascading innovation or forking innovation;

(b) evidence satisfactory to the minister demonstrating a definitive link between the eligible intellectual property contained in the applicant's original application for an SCII certificate and the intellectual property forming the basis of the proposed cascading innovation or forking innovation; and

(c) any other information requested by the minister that is reasonably required to make the assessment of the eligibility of the cascading innovation or forking innovation set out in this section.

(4) The minister may cause the form mentioned in subsection (2) to be posted on the ministry's website and to be made known to the public in any manner that the minister considers appropriate.

- (5) The minister may appoint a technical assessor to evaluate the eligibility of the cascading innovation or forking innovation, and subsections 6(3) and (4) of the Act apply, with any necessary modification.
- (6) On completing its review of the material forwarded to it pursuant to this section, the technical assessor shall provide an opinion to the minister with respect to whether the eligible corporation's proposed cascading or forking innovation is an eligible cascading innovation or eligible forking innovation, as the case may be.
- (7) On reviewing an opinion provided by a technical assessor pursuant to subsection (6), the minister shall:
- (a) if the minister is satisfied that the cascading innovation is an eligible cascading innovation or that the forking innovation is an eligible forking innovation, provide notice to the eligible corporation, in writing, that the cascading innovation or forking innovation is an eligible cascading innovation or eligible forking innovation, as the case may be; or
 - (b) if the minister is not satisfied that the cascading innovation is an eligible cascading innovation or that the forking innovation is an eligible forking innovation, provide notice to the eligible corporation, in writing, that the cascading innovation or forking innovation is not an eligible cascading innovation or eligible forking innovation, as the case may be.
- (8) The eligible corporation that has been provided the notice mentioned in clause (7)(a) with respect to its eligible cascading innovation or eligible forking innovation may include the income associated with the eligible cascading innovation or eligible forking innovation, as the case may be, in its claim for a rebate in accordance with section 64.6 of *The Income Tax Act, 2000* for the remaining rebate period associated with the eligible corporation's SCII certificate.

7 Jly 2017 cS-10.2 Reg 1 s6.

Interest rate re recovery of overpayment or rebate to which corporation is not entitled

7(1) For the purposes of clause 23(1)(c) of the Act, the rate of interest per annum with respect to the recovery of a tax rebate paid to a corporation to which that corporation was not entitled is the rate equal to the sum of:

- (a) the prime lending rate of the bank holding the general revenue fund as determined and adjusted in accordance with this section; and
 - (b) 3%.
- (2) The interest rate set out in this section is to be determined on June 15 and December 15 in each year and:
- (a) the interest rate as determined on June 15 applies to interest on the amount mentioned in the certificate filed pursuant to clause 23(1)(c) of the Act accruing from July 1; and

(b) the interest rate as determined on December 15 applies to interest on the amount mentioned in the certificate filed pursuant to clause 23(1)(c) of the Act accruing from January 1 of the following year.

7 Jly 2017 cS-10.2 Reg 1 s7.

Service of notice or documents

8 In addition to the methods mentioned in subsection 26(1) of the Act, any notice, decision or other document required to be given or served may be served:

- (a) by email to the last email address provided to the minister by the person to be served; or
- (b) by any other manner of electronic submission that is satisfactory to the minister.

7 Jly 2017 cS-10.2 Reg 1 s8.

Coming into force

9(1) Subject to subsection (2), these regulations come into force on the day on which section 1 of *The Saskatchewan Commercial Innovation Incentive (Patent Box) Act* comes into force.

(2) If these regulations are filed with the Registrar of Regulations after the day on which section 1 of *The Saskatchewan Commercial Innovation Incentive (Patent Box) Act* comes into force, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

7 Jly 2017 cS-10.2 Reg 1 s9.