

117TH CONGRESS  
1ST SESSION

# S. 1203

To rescue domestic medical product manufacturing activity by providing incentives in economically distressed areas of the United States and its possessions.

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IN THE SENATE OF THE UNITED STATES

APRIL 19, 2021

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To rescue domestic medical product manufacturing activity by providing incentives in economically distressed areas of the United States and its possessions.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medical Manufac-  
5 turing, Economic Development, and Sustainability Act of  
6 2021” or the “MMEDS Act of 2021”.

1 **SEC. 2. ECONOMICALLY DISTRESSED ZONES.**

2 (a) IN GENERAL.—Chapter 1 of the Internal Rev-  
 3 enue Code of 1986 is amended by adding at the end the  
 4 following new subchapter:

5 **“Subchapter AA—Medical Product Manufac-**  
 6 **turing in Economically Distressed Zones**

“SUBCHAPTER AA—MEDICAL PRODUCT MANUFACTURING IN ECONOMICALLY  
 DISTRESSED ZONES

“Sec. 1400AA–1. Medical product manufacturing in economically distressed  
 zone credit.

“Sec. 1400AA–2. Credit for economically distressed zone products and services  
 acquired by domestic medical product manufacturers.

“Sec. 1400AA–3. Special rules to secure the national supply chain.

“Sec. 1400AA–4. Designation of economically distressed zones.

7 **“SEC. 1400AA–1. MEDICAL PRODUCT MANUFACTURING IN**  
 8 **ECONOMICALLY DISTRESSED ZONE CREDIT.**

9 “(a) ALLOWANCE OF CREDIT.—There shall be al-  
 10 lowed as a credit against the tax imposed by subtitle A  
 11 for the taxable year an amount equal to 40 percent of the  
 12 sum of—

13 “(1) the aggregate amount of the taxpayer’s  
 14 medical product manufacturing economically dis-  
 15 tressed zone wages for such taxable year,

16 “(2) the allocable employee fringe benefit ex-  
 17 penses of the taxpayer for such taxable year, and

18 “(3) the depreciation and amortization allow-  
 19 ances of the taxpayer for the taxable year with re-  
 20 spect to qualified medical product manufacturing fa-  
 21 cility property.

1       “(b) DENIAL OF DOUBLE BENEFIT.—Any wages or  
 2 other expenses taken into account in determining the cred-  
 3 it under this section may not be taken into account in de-  
 4 termining the credit under sections 41, and any other pro-  
 5 vision determined by the Secretary to be substantially  
 6 similar.

7       “(c) DEFINITIONS AND SPECIAL RULES.—For pur-  
 8 poses of this section—

9               “(1) ECONOMICALLY DISTRESSED ZONE  
 10 WAGES.—

11               “(A) IN GENERAL.—The term ‘economi-  
 12 cally distressed zone wages’ means amounts  
 13 paid or incurred for wages during the taxable  
 14 year which are—

15                       “(i) in connection with the active con-  
 16 duct of a trade or business of the taxpayer,  
 17 and

18                       “(ii) paid or incurred for an employee  
 19 the principal place of employment of whom  
 20 is in a qualified medical product manufac-  
 21 turing facility of such taxpayer.

22               “(B) LIMITATION ON AMOUNT OF WAGES  
 23 TAKEN INTO ACCOUNT.—

24               “(i) IN GENERAL.—The amount of  
 25 wages which may be taken into account

under subparagraph (A) with respect to any employee for any taxable year shall not exceed the contribution and benefit base determined under section 230 of the Social Security Act for the calendar year in which such taxable year begins.

“(ii) TREATMENT OF PART-TIME EMPLOYEES, ETC.—If—

“(I) any employee is not employed by the taxpayer on a substantially full-time basis at all times during the taxable year, or

“(II) the principal place of employment of any employee is not within an economically distressed zone at all times during the taxable year,

the limitation applicable under clause (i) with respect to such employee shall be the appropriate portion (as determined by the Secretary) of the limitation which would otherwise be in effect under clause (i).

“(C) TREATMENT OF CERTAIN EMPLOYEES.—The term ‘economically distressed zone wages’ shall not include any wages paid to employees who are assigned by the employer to

1 perform services for another person, unless the  
2 principal trade or business of the employer is to  
3 make employees available for temporary periods  
4 to other persons in return for compensation.

5 “(D) WAGES.—For purposes of this para-  
6 graph, the term ‘wages’ shall not include any  
7 amounts which are allocable employee fringe  
8 benefit expenses.

9 “(2) ALLOCABLE EMPLOYEE FRINGE BENEFIT  
10 EXPENSES.—

11 “(A) IN GENERAL.—The term ‘allocable  
12 employee fringe benefit expenses’ means the ag-  
13 gregate amount allowable as a deduction under  
14 this chapter to the taxpayer for the taxable year  
15 for the following amounts which are allocable to  
16 employment in a qualified medical product  
17 manufacturing facility:

18 “(i) Employer contributions under a  
19 stock bonus, pension, profit-sharing, or an-  
20 nuity plan.

21 “(ii) Employer-provided coverage  
22 under any accident or health plan for em-  
23 ployees.

24 “(iii) The cost of life or disability in-  
25 surance provided to employees.

1           “(B) ALLOCATION.—For purposes of sub-  
 2           paragraph (A), an amount shall be treated as  
 3           allocable to a qualified medical product manu-  
 4           facturing facility only if such amount is with re-  
 5           spect to employment of an individual for serv-  
 6           ices provided, and the principal place of employ-  
 7           ment of whom is, in such facility.

8           “(3) QUALIFIED MEDICAL PRODUCT MANUFAC-  
 9           TURING FACILITY.—The term ‘qualified medical  
 10          product manufacturing facility’ means any facility  
 11          that—

12                 “(A) researches and develops or produces  
 13                 medical products or essential components of  
 14                 medical products, and

15                 “(B) is located within an economically dis-  
 16                 tressed zone.

17           “(4) QUALIFIED MEDICAL PRODUCT MANUFAC-  
 18           TURING FACILITY PROPERTY.—The term ‘qualified  
 19           medical product manufacturing facility property’  
 20           means any property originally used in (or consisting  
 21           of) a qualified medical product manufacturing facil-  
 22           ity if such property is directly connected to the re-  
 23           search, development, or production of a medical  
 24           product.

1           “(5) MEDICAL PRODUCT; ESSENTIAL COMPO-  
2       NENT.—

3           “(A) MEDICAL PRODUCT.—The term ‘med-  
4       ical product’ means—

5                   “(i) a drug that—

6                           “(I) is a prescription drug sub-  
7                           ject to regulation under section 505 of  
8                           the Federal Food, Drug, and Cos-  
9                           metic Act (21 U.S.C. 355) or section  
10                          351 of the Public Health Service Act  
11                          (42 U.S.C. 262);

12                          “(II) is subject to regulation  
13                          under section 802 of the Federal  
14                          Food, Drug, and Cosmetic Act (21  
15                          U.S.C. 382); or

16                          “(III) is described in section  
17                          201(jj) of such Act (21 U.S.C.  
18                          321(jj)); or

19                          “(ii) a device, as defined in section  
20                          201(h) of such Act (21 U.S.C. 321(h)).

21           “(B) ESSENTIAL COMPONENT.—The term  
22       ‘essential component’ means, with respect to a  
23       medical product—

24                   “(i) an active pharmaceutical ingre-  
25                   dient; or

1 “(ii) a protein, antibody, enzyme, hor-  
 2 mone, or other organic material that is an  
 3 active ingredient in a biological product.

4 “(6) AGGREGATION RULES.—

5 “(A) IN GENERAL.—For purposes of this  
 6 section, members of an affiliated group shall be  
 7 treated as a single taxpayer.

8 “(B) AFFILIATED GROUP.—The term ‘af-  
 9 filiated group’ means an affiliated group (as de-  
 10 fined in section 1504(a), determined without re-  
 11 gard to section 1504(b)(3)) one or more mem-  
 12 bers of which are engaged in the active conduct  
 13 of a trade or business within an economically  
 14 distressed zone.

15 **“SEC. 1400AA-2. CREDIT FOR ECONOMICALLY DISTRESSED**  
 16 **ZONE PRODUCTS AND SERVICES ACQUIRED**  
 17 **BY DOMESTIC MEDICAL PRODUCT MANUFAC-**  
 18 **TURERS.**

19 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-  
 20 gible medical product manufacturer, there shall be allowed  
 21 as a credit against the tax imposed by subtitle A for the  
 22 taxable year an amount equal to the applicable percentage  
 23 of the aggregate amounts paid or incurred by the taxpayer  
 24 during such taxable year for qualified products or services.

1       “(b) APPLICABLE PERCENTAGE.—For purposes of  
2 this section, the term applicable percentage means—

3               “(1) 30 percent in the case of amounts paid or  
4 incurred to persons not described in paragraph (2)  
5 or (3), and

6               “(2) 5 percent in the case of amounts paid or  
7 incurred to a related person.

8       “(c) ELIGIBLE MEDICAL PRODUCT MANUFAC-  
9 TURER.—For purposes of this section, the term ‘eligible  
10 medical product manufacturer’ means any person in the  
11 trade or business of producing medical products in the  
12 United States.

13       “(d) QUALIFIED PRODUCT OR SERVICE.—For pur-  
14 poses of this section, the term ‘qualified product or service’  
15 means—

16               “(1) any product which is produced in an eco-  
17 nomically distressed zone and which is integrated  
18 into a medical product produced by the taxpayer,  
19 and

20               “(2) any service which is provided in an eco-  
21 nomically distressed zone and which is necessary to  
22 the production of a medical product by the taxpayer  
23 (including packaging).

24       “(e) RELATED PERSONS.—For purposes of this sec-  
25 tion, persons shall be treated as related to each other if

1 such persons would be treated as a single employer under  
 2 the regulations prescribed under section 52(b).

3 “(f) OTHER TERMS.—Terms used in this section  
 4 which are also used in section 1400AA–1 shall have the  
 5 same meaning as when used in such section.

6 **“SEC. 1400AA-3. SPECIAL RULES TO SECURE THE NATIONAL**  
 7 **SUPPLY CHAIN.**

8 “(a) IN GENERAL.—In the case of a qualified repatri-  
 9 ated pharmaceutical manufacturing facility, section  
 10 1400AA–1(a) shall be applied by substituting ‘60 percent’  
 11 for ‘40 percent’.

12 “(b) ELECTION TO EXPENSE IN LIEU OF TAX CRED-  
 13 IT FOR DEPRECIATION.—In the case of a taxpayer which  
 14 elects (at such time and in such manner as the Secretary  
 15 may provide) the application of this subsection with re-  
 16 spect to any qualified repatriated medical product manu-  
 17 facturing facility or qualified population health product  
 18 manufacturing facility—

19 “(1) section 1400AA–1(a)(3) shall not apply  
 20 with respect to any qualified medical product manu-  
 21 facturing facility property with respect to such facil-  
 22 ity, and

23 “(2) for purposes of section 168(k)—

24 “(A) such property shall be treated as  
 25 qualified property, and

1 “(B) the applicable percentage with respect  
2 to such property shall be 100 percent.

3 “(c) QUALIFIED REPATRIATED MEDICAL PRODUCT  
4 MANUFACTURING FACILITY.—For purposes of this sec-  
5 tion, the term ‘qualified repatriated medical product man-  
6 ufacturing facility’ means any qualified medical product  
7 manufacturing facility (as defined in section 1400AA–1)  
8 the production of which was moved to an economically dis-  
9 tressed zone from a foreign country that the United States  
10 Trade Representative has determined could pose a risk to  
11 the national supply chain because of political or social fac-  
12 tors.

13 **“SEC. 1400AA–4. DESIGNATION OF ECONOMICALLY DIS-**  
14 **TRESSED ZONES.**

15 “(a) IN GENERAL.—For purposes of this subchapter,  
16 the term ‘economically distressed zone’ means any popu-  
17 lation census tract within the United States which—

18 “(1) has a poverty rate of not less than 35 per-  
19 cent for each of the 5 most recent calendar years for  
20 which information is available, or

21 “(2) satisfies each of the following require-  
22 ments:

23 “(A) The census tract has pervasive pov-  
24 erty, unemployment, low labor force participa-  
25 tion, and general distress measured as a pro-

1           longed period of economic decline measured by  
2           real gross national product.

3           “(B) The census tract has a poverty rate  
4           of not less than 30 percent for each of the 5  
5           most recent calendar years for which informa-  
6           tion is available.

7           “(C) The census tract has been designated  
8           as such by the Secretary and the Secretary of  
9           Commerce pursuant to an application under  
10          subsection (b).

11       “(b) APPLICATION FOR DESIGNATION.—

12           “(1) IN GENERAL.—An application for designa-  
13          tion as an economically distressed zone may be filed  
14          by a State or local government in which the popu-  
15          lation census tract to which the application applies  
16          is located.

17           “(2) REQUIREMENTS.—Such application shall  
18          include a strategic plan for accomplishing the pur-  
19          poses of this subchapter, which—

20           “(A) describes the coordinated economic,  
21          human, community, and physical development  
22          plan and related activities proposed for the  
23          nominated area,

24           “(B) describes the process by which the af-  
25          fected community is a full partner in the proc-

1        ess of developing and implementing the plan  
2        and the extent to which local institutions and  
3        organizations have contributed to the planning  
4        process,

5            “(C) identifies the amount of State, local,  
6        and private resources that will be available in  
7        the nominated area and the private/public part-  
8        nerships to be used, which may include partici-  
9        pation by, and cooperation with, universities,  
10       medical centers, and other private and public  
11       entities,

12           “(D) identifies the funding requested  
13       under any Federal program in support of the  
14       proposed economic, human, community, and  
15       physical development and related activities,

16           “(E) identifies baselines, methods, and  
17       benchmarks for measuring the success of car-  
18       rying out the strategic plan, including the ex-  
19       tent to which poor persons and families will be  
20       empowered to become economically self-suffi-  
21       cient, and

22           “(F) does not include any action to assist  
23       any establishment in relocating from one area  
24       outside the nominated area to the nominated  
25       area, except that assistance for the expansion of

1 an existing business entity through the estab-  
2 lishment of a new branch, affiliate, or sub-  
3 sidiary is permitted if—

4 “(i) the establishment of the new  
5 branch, affiliate, or subsidiary will not re-  
6 sult in a decrease in employment in the  
7 area of original location or in any other  
8 area where the existing business entity  
9 conducts business operations,

10 “(ii) there is no reason to believe that  
11 the new branch, affiliate, or subsidiary is  
12 being established with the intention of clos-  
13 ing down the operations of the existing  
14 business entity in the area of its original  
15 location or in any other area where the ex-  
16 isting business entity conducts business op-  
17 eration, and

18 “(iii) includes such other information  
19 as may be required by the Secretary and  
20 the Secretary of Commerce.

21 “(c) PERIOD FOR WHICH DESIGNATIONS ARE IN EF-  
22 FECT.—Designation as an economically distressed zone  
23 may be made at any time during the 10-year period begin-  
24 ning on the date of the enactment of this section, and shall  
25 remain in effect with respect to such zone during the 15-

1 year period beginning on the date of such designation.  
 2 Economically distressed zones described in subsection  
 3 (a)(1) shall take effect on the date of the enactment of  
 4 this Act and shall remain in effect during the 15-year pe-  
 5 riod beginning on such date.

6 “(d) TERRITORIES AND POSSESSIONS.—The term  
 7 ‘United States’ includes the 50 States, the District of Co-  
 8 lumbia, and the territories and possessions of the United  
 9 States.

10 “(e) REGULATIONS.—The Secretary shall issue such  
 11 regulations or other guidance as may be necessary or ap-  
 12 propriate to carry out the purposes of this section, includ-  
 13 ing—

14 “(1) not later than 30 days after the date of  
 15 the enactment of this section, a list of the population  
 16 census tracts described in subsection (a)(1), and

17 “(2) not later than 60 days after the date of  
 18 the enactment of this section, regulations or other  
 19 guidance regarding the designation of population  
 20 census tracts described in subsection (a)(2).”.

21 (b) CLERICAL AMENDMENT.—The table of sub-  
 22 chapters for chapter 1 of the Internal Revenue Code of  
 23 1986 is amended by adding at the end the following new  
 24 item:

“SUBCHAPTER AA—MEDICAL PRODUCT MANUFACTURING IN ECONOMICALLY  
 DISTRESSED ZONES”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2020.

4 **SEC. 3. REPORT ON NEED FOR INCENTIVIZING DEVELOP-**  
5 **MENT OF THERAPIES.**

6 Not later than 90 days after the date of enactment  
7 of this Act, the Secretary of Health and Human Services  
8 shall examine and report to the Congress on—

9 (1) the extent to which the health of aging indi-  
10 viduals in the United States, African Americans,  
11 Hispanics, Native Americans, veterans, or other vul-  
12 nerable populations in the United States has been  
13 disproportionately harmed by the COVID–19 pan-  
14 demic and prior epidemics and pandemics;

15 (2) the therapies currently available, and  
16 whether there is a need for additional innovation  
17 and development to produce therapies, to reduce the  
18 exposure of vulnerable populations in the United  
19 States to risk of disproportionate harm in epidemics  
20 and pandemics; and

21 (3) whether the Secretary recommends pro-  
22 viding the same incentives for the development and  
23 marketing of therapies described in paragraph (2) as  
24 is provided under the Federal Food, Drug, and Cos-  
25 metic Act (21 U.S.C. 301 et seq.) with respect to

1       qualified infectious disease products designated  
2       under section 505E(d) of such Act (21 U.S.C.  
3       355f(d)).

○