Commerce (Department) published a proposed rule, “Securing the Information and Communications Technology and Services Supply Chain; Connected Software Applications,” (Connected Software Applications Rule) to implement provisions of Executive Order 14034, “Protecting Americans’ Sensitive Data from Foreign Adversaries,” 86 FR 31423 (June 11, 2021). Commenters have noted that the original comment deadline of December 27, 2021, may constrain those seeking to comment on the rule and have asked that the comment date be extended. The Department agrees and will extend the comment period for this proposed rule to January 11, 2022.

Trisha Anderson,
Deputy Assistant Secretary for Intelligence and Security, U.S. Department of Commerce.

FEDERAL TRADE COMMISSION
16 CFR Part 461
Trade Regulation Rule on Impersonation of Government and Businesses

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (“Commission”) proposes to commence a rulemaking proceeding to address certain deceptive or unfair acts or practices of impersonation. The Commission is soliciting written comment, data, and arguments concerning the need for, and specific term of, a rulemaking to prevent impersonation, and organizations from impersonating government agencies or staff and organizations from impersonating businesses.

DATES: Comments must be received on or before February 22, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the SUPPLEMENTARY INFORMATION section below. Write “Impersonation ANPR; FTC File No. R207000” on your comment and file your comment online at https://www.regulations.gov. If you prefer to file on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address:

Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:
Christopher E. Brown (202–326–2825), cbrown3@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. General Background Information

The Commission is publishing this document pursuant to Section 18 of the Federal Trade Commission (“FTC”) Act, 15 U.S.C. 57a; the provisions of Part 1, Subpart B, of the Commission’s Rules of Practice, 16 CFR 1.7 through 1.20; and 5 U.S.C. 553. This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

II. Objectives the Commission Seeks To Achieve and Possible Regulatory Alternatives

A. Background

Impersonation scams are a leading source of consumer fraud reported to the Commission, with the highest total financial loss for consumers.

Impersonation scams take many forms, but they generally involve scammers pretending to be a trusted source who convinces their targets to send money or to disclose personal information. In the first three quarters of 2021, more than 788,000 impersonation scams were reported to the Commission, with a total reported monetary loss of about $1.6 billion dollars. These scams often specifically target older consumers and communities of color as well as small businesses.


2 Fed. Trade Comm’n, Fraud Reports: Subcategories over time; Imposter Scams, Tableau Public [Nov. 23, 2021], https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/SubcategoriesOverTime. While some of the increase observed in 2021 is attributable to new data contributors, including the Social Security Administration, impersonation is a massive and persistent fraud and has been the top fraud category reported to the FTC every year since 2017. See Fed. Trade Comm’n, Fraud Reports: Top Reports, Tableau Public [Nov. 23, 2021], https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/TopReports. For a list of sentinel data contributors, see https://www.ftc.gov/enforcement/consumer-sentinel-network/data-contributors.


6 While some of the increase observed in 2021 is attributable to new data contributors, including the Social Security Administration, impersonation is a massive and persistent fraud and has been the top fraud category reported to the FTC every year since 2017. See Fed. Trade Comm’n, Fraud Reports: Top Reports, Tableau Public [Nov. 23, 2021], https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/TopReports. For a list of sentinel data contributors, see https://www.ftc.gov/enforcement/consumer-sentinel-network/data-contributors.


9 Government and business impersonators are fishing for information they can use to commit identity theft or seek monetary payment, often requesting funds via wire transfer, gift cards, or (increasingly) cryptocurrency. The impersonator can take many forms, posing as, for example, a lottery official, a government official or employee, or a representative from a well-known business or charity. Impersonators may also use implicit representations, such as misleading domain names and URLs and “spoofed” contact information, to create an overall net impression of legitimacy.


9 See, e.g., Compl. at 3–4, FTC v. D&S Mgkt. Sols., LLC, No. 8:16–cv–01177–JM–PAS (D.R.I. filed Apr. 17, 2020) (causing small businesses to believe callers were affiliated with the Small Business Administration); Compl. at 6–7, FTC v. Epitior Corp., No. 03–CV–8511–DAB (S.D.N.Y. filed Nov. 3, 2003) (defendants sold internet services to small businesses and falsely represented they were calling from Verizon or the yellow pages).

10 Robocalls to small businesses claiming to be Google: Compl. at 2, FTC v. DOTAAuthority, Inc., No. 16–cv–62186 (S.D. Fla. filed Sept. 13, 2016) (“Many of the consumers harmed by Defendants’ false representations are small businesses with only a few employees and fewer than five trucks.”); Compl. at 4, FTC v. Epitior Corp., No. 03–CV–8511–DAB (S.D.N.Y. filed Nov. 3, 2003) (defendants sold internet services to small businesses and falsely represented they were calling from Verizon or the yellow pages).
Government impersonators typically assert an air of authority to stage their scam, and they use all methods of communication to reach their targets. These scammers sometimes threaten a target with severe consequences such as a discontinuation of benefits,\(^8\) enforcement of tax liability,\(^9\) and even arrest or prosecution.\(^10\) Another observed tactic of government impersonators is to deceive consumers into paying for services that would otherwise be free,\(^11\) or to lure them with promises of government grants, prizes, or loan forgiveness.\(^12\) Business impersonators typically get consumers’ attention with emails, telephone calls, or text messages about suspicious activity on consumers’ accounts or computers or supposed good news about a refund or prize in hopes of gaining trust and receiving personal information.\(^13\)

Data reported to the FTC and the Commission’s law enforcement experience indicate strongly that government impersonation scams are highly prevalent and increasingly harmful. From January 1, 2017 through September 30, 2021, consumers reported 1,362,996 instances of government impersonation and associated total losses of roughly $922,739,109.\(^14\) The most common such schemes involved Social Security Administration (SSA) impersonators, with more than 308,000 complaints alleging SSA impersonation, followed by the IRS (124,000) and Health and Human Services/Medicare programs (125,000).\(^15\) There were also several thousand reports of scammers impersonating government grant-makers (19,000); FBI, police, or sheriff personnel (11,500); the FTC (9,500); the Treasury Department (14,000); and the U.S. Postal Service (6,500).\(^16\)

Scammers are quick to capitalize on the COVID–19 pandemic by exploiting consumers’ concerns about their health and safety, public misinformation and confusion surrounding the crisis, and the government’s response, which has fueled various COVID-related impersonation scams.\(^17\)

Business impersonation scams cause a similarly enormous amount of financial harm to the public. From January 1, 2017 through September 30, 2021, consumers reported being defrauded of roughly $852 million in 753,555 business impersonation incidents.\(^18\) For business impersonation frauds reported in the FTC’s Consumer Sentinel Network, consumers most frequently identified impersonators of Amazon and Apple. Other common impersonators include Publisher’s Clearing House, tech companies such as Microsoft and Facebook, retail banks (Bank of America, Wells Fargo, Citigroup, and JPMorgan), utilities (Comcast, Verizon, and AT&T), and consumer goods brands such as Costco and Walmart.\(^19\)

Impersonation fraud in general—including business, government, friend and family, romance, and tech support impersonation—has increased during the pandemic, with reported total losses of $2 billion between October 2020 and September 2021 (up 85% year over year).\(^20\) Since the pandemic began, COVID-specific scam reports have included 12,491 complaints of government impersonation and 8,794 complaints of business impersonation.\(^21\)

The incidence of business impersonation climbed higher during the pandemic as commerce shifted significantly online: There were 273,000 complaints about business impersonation during the period of July 2020 through June 2021, of which roughly one third—over 96,000—identify Amazon.\(^22\) Consumers reported losing more than $27 million to Amazon impersonation alone.\(^23\)

Although the Commission has brought many cases involving impersonator scams under Section 5 of the FTC ACT, 15 U.S.C. 45, its current remedial authority is limited. The U.S. Supreme Court recently held that equitable monetary relief, including consumer redress, is not available under Section 13(b) of the FTC Act.\(^24\) Additionally, consumer redress under...
Section 19(b), 15 U.S.C. 57a(a) through (b), is limited and challenging to obtain without a rule violation. The Commission believes a rule addressing certain types of unfair or deceptive acts or practices involving impersonation, including affiliation and endorsement, of government and businesses could help reduce the level of fraud in this area and serve as an additional deterrent for bad actors in the future because such a trade regulation rule would subject first-time violators to civil penalties.25 It would also enable the Commission to obtain redress for consumers who lost money to impersonation scams.

B. Objectives and Regulatory Alternatives

The Commission requests input on whether and how it should use its authority under Section 18 of the FTC Act, 15 U.S.C. 57a, to address deceptive or unfair acts or practices involving impersonation. Specifically, the Commission proposes adding the following language which has been the subject of numerous Commission investigations and law enforcement actions: (a) Impersonation of a government official or agency by a person or organization without authority to act on behalf of that government;26 (b) impersonation of a business or its agents by a person or organization without authority to act on behalf of that business;27 and (c) entities that may provide the means and instrumentalities for these.
C. The Rulemaking Process

The Commission seeks the broadest participation in the rulemaking. It encourages all interested parties to submit written comments. The Commission also requests input in analyzing various options and in drafting a proposed rule. After reviewing comments submitted in response to this advance notice of proposed rulemaking, the Commission may proceed with further steps outlined in Section 18 of the FTC Act and Part 1, Subpart B, of the Commission’s Rules of Practice.

III. Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission’s consideration of the proposed rulemaking. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) How widespread is the impersonation of government entities, such as agencies of the U.S., state, and local governments? To what extent are claims made expressly and to what extent are they made by implication, such as claims of endorsement or affiliation? What types of communication and technology are used to facilitate the impersonation of government entities? What data sources did you rely on in formulating your answer(s)?

(2) How widespread is the impersonation of businesses? To what extent are claims made expressly and to what extent are they made by implication, such as claims of endorsement or affiliation? What types of communication and technology are used to facilitate the impersonation of businesses? What data sources did you rely on in formulating your answer(s)?

(3) How widespread is the impersonation of individuals or entities other than governments and businesses? What data sources did you rely on in formulating your answer(s)?

(4) How should a rule addressing the practices described in Questions 1 through 3, above, define the term “impersonation”? What claims, images, or symbols are likely to give rise to the net impression of government or business impersonation? What evidence supports your answer(s)?

(5) For any practices described in Questions 1 through 3, above, are there individuals or entities that provide the means and instrumentalities for impersonators to conduct such practices? If so, what types of goods or services do they provide that significantly enable impersonators to conduct such practices? What type of consumer injury does this cause? Under what circumstances should the provision of such goods or services be considered deceptive or unfair? What evidence supports your answer(s)?

(6) For any practices discussed in Questions 1 through 3, above, does the practice cause consumer injury? If so, what type of consumer injury does it cause? What evidence demonstrates such practices cause consumer injury? Please provide the evidence.

(7) For each of the practices described in Questions 1 through 3, above, are there circumstances in which such practices would not be deceptive or unfair? If so, what are those circumstances and could the Commission identify circumstances from the scope of any rulemaking? Why or why not?

(8) What existing laws and regulations, other than the FTC Act, if any, address the practices described in Questions 1 through 3, above? How do those laws and regulations affect consumers? How do those laws and regulations affect businesses, particularly small businesses? What evidence supports your answer(s)?

(9) Is there a need for new regulations to prevent the practices described in Questions 1 through 3, above? If yes, why? If no, why not? What evidence supports your answer(s)?

(10) How should a rule addressing the practices described in Questions 1 through 3, above, be crafted to maximize the benefits to consumers while minimizing the costs to businesses? What evidence supports your answer(s)?

(11) Should the Commission consider publishing additional consumer and business education materials or hosting public workshops to reduce consumer harm associated with the practices described in Questions 1 through 3, above? If so, what should such education materials include, and how should the Commission communicate that information to consumers and businesses?

(12) What alternatives to regulations should the Commission consider to address the practices described in Questions 1 through 3, above? Would those alternatives obviate the need for regulation? If so, why? If not, why not? What evidence supports your answer(s)?

(13) Are there other commercial acts or practices involving impersonation that are deceptive or unfair that should be addressed in the proposed rulemaking? If so, describe the practices. How widespread are the practices? Please answer Questions 4 through 11, above, with respect to these practices.

IV. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 22, 2022. Write “Impersonation ANPR: FTC File No. R207000” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the website https://www.regulations.gov. Because of the public health emergency in response to the COVID–19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the https://www.regulations.gov website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write “Impersonation ANPR: FTC File No. R207000” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment by courier or overnight service to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

Because your comment will be placed on the public record, you are solely responsible for making sure your comment does not include any sensitive or confidential information. Your comment should not contain sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or
other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which...is privileged or confidential”—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before February 22, 2022. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see https://www.ftc.gov/site/privacy/privacy-policy.

By direction of the Commission.

April J. Tabor,
Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Statement Issued on December 16, 2021

Statement of Chair Lina M. Khan Regarding the Advance Notice of Proposed Rulemaking on Government & Business Impersonation

Government and business impersonation schemes cheat American consumers and small businesses out of billions of dollars every year. These scammers often pretend to be working for government institutions—like the Social Security Administration, the IRS, or law enforcement—and tell targets that if they don’t hand over money or submit sensitive personal information, they could lose a government benefit, face a tax liability—or even be arrested. Sometimes these fraudsters pull off these schemes instead by pretending to be working for a well-known brand or company.

Both our enforcement work and consumer data suggest that government and business impersonation scams appear highly prevalent and increasingly harmful. These scams have been the top category of fraud reports and the largest source of total reported consumer financial losses for several years.1

Impersonation fraud in general has skyrocketed during the pandemic—with impersonation fraudsters scamming Americans out of around $2 billion between October of last year and September of this year, an 85% increase over the previous year.2

Government and business impersonators have shamelessly capitalized on the health, safety, and financial worries catalyzed by the COVID–19 crisis—not only tricking Americans into handing over their money or sensitive personal information, but also impeding access to needed goods, services, and benefits. While these scams affect consumers from all walks of life, our data show that scammers often specifically target the most vulnerable, including senior citizens, communities of color, and small businesses.3

The FTC routinely prosecutes these scams and has returned millions of dollars to defrauded consumers. In the last fiscal year alone, FTC’s law enforcement work delivered more than $403 million back to consumers.4

To ensure that we can continue to protect Americans from these fraudsters, our staff has recommended that we initiate a rulemaking proceeding to codify a prohibition on impersonator fraud. I strongly support the issuance of this Advance Notice of Proposed Rulemaking. It is critical that our 13(b) authority be restored. It is also incumbent on the Commission to use the full range of tools that Congress has given us to ensure that Americans are protected from these fraudsters.

A rulemaking in this area could likely have a market-wide impact and serve as a deterrent for bad actors, given that a rule here would represent one of the most significant anti-fraud initiatives at the agency in decades.

I urge my colleagues to support this ANPR and broader efforts to use our full authority to protect Americans from government and business impersonation scams. I will look forward to public comments and engagement during our rulemaking proceeding to inform this effort.

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BILLING CODE 6750–01–P


However, the recent Supreme Court decision in AMG Capital Management, LLC v. FTC has significantly curbed our ability to recover money for the victims of these schemes.5 To ensure that we can continue to protect Americans from these fraudsters, our staff has recommended that we initiate a rulemaking proceeding to codify a prohibition on impersonator fraud. I strongly support the issuance of this Advance Notice of Proposed Rulemaking. It is critical that our 13(b) authority be restored. It is also incumbent on the Commission to use the full range of tools that Congress has given us to ensure that Americans are protected from these fraudsters.

A rulemaking in this area could likely have a market-wide impact and serve as a deterrent for bad actors, given that a rule here would represent one of the most significant anti-fraud initiatives at the agency in decades.

I urge my colleagues to support this ANPR and broader efforts to use our full authority to protect Americans from government and business impersonation scams. I will look forward to public comments and engagement during our rulemaking proceeding to inform this effort.

[FR Doc. 2021–27731 Filed 12–22–21; 8:45 am]
BILLING CODE 6750–01–P


5 AMG Capital Management, LLC v. FTC, 141 S.Ct. 1341 (Apr. 2021). For government and impersonation cases that involve violations of current FTC rules, such as the Telemarketing Sales Rule, the Commission can still file actions in federal district court seeking either consumer redress under Section 19 or civil penalties under Section 5(m)(1)(A) of the FTC Act. But numerous types of impersonation schemes are not captured by these existing FTC rules. For example, numerous enforcement actions in which the FTC returned money to victims of impersonation fraud—such as FTC v. Forms Direct, which returned $2.2 million to individuals, or FTC v. Corporate Compliance Services, which returned over $1 million to small businesses—do not fall under existing FTC rules. See, e.g., FTC v. Forms Direct, Inc. (American Immigration Center), No. 3:18–cv–06294 (N.D. Cal. filed Oct. 16, 2018); FTC v. Corp. Compliance Servs., No. Case No. 4:18–cv–02368 (S.D. Tex. Filed July 10, 2018); FTC v. DOTAuthority.com, Inc., No. 16–cv–62186 (S.D. Fla. Filed Sept. 13, 2016); FTC v. Springtech 77376, LLC, also d/b/a Cedarcide.com, No. 4:12–cv–04631–PH (N.D. Cal. filed Sept. 5, 2012); see also, FTC v. Gerber Products Co., No. 2:14–cv–06771–SRC–CLW (D.N.J. filed Oct. 30, 2014) (despite no consumer redress, case illustrates how businesses can make false claims of affiliation or endorsement outside of current FTC rules).

6 See 15 U.S.C. 45(m)(1)(A); see also COVID–19 Consumer Protection Act of the 2021 Consolidated Appropriations Act Section 1401, Public Law 116–260, 134 Stat. 1182 (permitting the Commission to seek civil penalties for violations of Section 5 of the FTC Act that are associated with “the treatment, cure, prevention, mitigation, or diagnosis of COVID–19” or “a government benefit related to COVID–19”).