

United States; and (B) includes an organization designated by the Secretary of State as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. § 1189). “National of the United States” has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(22)).

**“Listed precursor or a listed toxic chemical”** means a precursor or a toxic chemical, respectively, listed in Schedule I of the Annex on Chemicals to the Chemical Weapons Convention. See 18 U.S.C. § 229F(6)(B), (8)(B). “Precursor” has the meaning given that term in 18 U.S.C. § 229F(6)(A). “Toxic chemical” has the meaning given that term in 18 U.S.C. § 229F(8)(A).

**“Nuclear byproduct material”** has the meaning given that term in 18 U.S.C. § 831(g)(2).

**“Nuclear material”** has the meaning given that term in 18 U.S.C. § 831(g)(1).

**“Select biological agent”** means a biological agent or toxin identified (A) by the Secretary of Health and Human Services on the select agent list established and maintained pursuant to section 351A of the Public Health Service Act (42 U.S.C. § 262a); or (B) by the Secretary of Agriculture on the list established and maintained pursuant to section 212 of the Agricultural Bio-terrorism Protection Act of 2002 (7 U.S.C. § 8401).

**“Toxin”** has the meaning given that term in 18 U.S.C. § 178(2).

**“Weapon of mass destruction”** has the meaning given that term in 18 U.S.C. § 2332a(c)(2)(B), (C), and (D).

2. **Threat Cases.**—Subsection (a)(4)(B) applies in cases that involved a threat to use a weapon, agent, or material covered by this guideline but that did not involve any conduct evidencing an intent or ability to carry out the threat. For example, subsection (a)(4)(B) would apply in a case in which the defendant threatened to contaminate an area with anthrax and also dispersed into the area a substance that appeared to be anthrax but that the defendant knew to be harmless talcum powder. In such a case, the dispersal of talcum powder does not evidence an intent on the defendant’s part to carry out the threat. In contrast, subsection (a)(4)(B) would not apply in a case in which the defendant threatened to contaminate an area with anthrax and also dispersed into the area a substance that the defendant believed to be anthrax but that in fact was harmless talcum powder. In such a case, the dispersal of talcum powder was conduct evidencing an intent to carry out the threat because of the defendant’s belief that the talcum powder was anthrax.

Subsection (a)(4)(B) shall not apply in any case involving both a threat to use any weapon, agent, or material covered by this guideline and the possession of that weapon, agent, or material. In such a case, possession of the weapon, agent, or material is conduct evidencing an intent to use that weapon, agent, or material.

3. **Application of Special Instruction.**—Subsection (d) applies in any case in which the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim, or (B) conduct tantamount to the attempted murder of more than one victim, regardless of whether the offense level is determined under this guideline or under another guideline in Chapter Two (Offense Conduct) by use of a cross reference under subsection (c).

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 2001 (amendment 633); November 1, 2002 (amendment 637); November 1, 2003 (amendment 655); November 1, 2005 (amendment 679); November 1, 2006 (amendment 686); November 1, 2007 (amendments 699 and 700); November 1, 2010 (amendment 746); November 1, 2016 (amendment 804); November 1, 2023 (amendment 824).
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