GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

29 April 1968

Honorable Edwin E. Willis
Chairman
Committee on Un-American Activities
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Reference is made to your request for the views of the Department of Defense with respect to H.R. 15336, 90th Congress, a bill "To amend the Subversive Activities Control Act of 1950."

The Department of Defense supports the broad objective of the bill to provide new statutory authority to replace Section 5(a)(1)(D) of the Act found unconstitutional by the United States Supreme Court in the case of United States v. Robel. The Department defers to the Attorney General on the question of constitutionality.

Our comments are directed to that part of the bill which amends Section 3 of the Subversive Activities Control Act of 1950, 50 U.S. Code 782.

At present, paragraph 3 (7) of the Subversive Activities Control Act defines a "facility." In our opinion, the revision to this paragraph proposed in paragraph (1) of H.R. 15626 is more desirable and is recommended for adoption. Paragraph (1) of the first part of the bill would designate as a defense facility "any plant, factory, or other manufacturing or service establishment designated by the Secretary of Defense." It omits the word "producing," but more importantly, it also omits the comprehensive listing found in the present law. We believe that these omissions would considerably restrict the scope and discretion of the Secretary in making his determination.

We also believe that the phrase "for the use of the Government" in describing the production or service of a defense facility constitutes a serious additional restriction not found in the present law. We recommend that this phrase be deleted because it would be a major impediment to the present scheme of operating the industrial defense