

(b) *Claims not within the scope of this subpart.* Claims are not payable within the scope of this subpart if they arise out of the operation of an MWR activity supported by a NAFI and are caused by:

(1) Military personnel or appropriated fund civilian employees performing assigned Air Force duties, even though they benefit a NAFI.

(2) Negligent operation or condition of premises for which a NAFI is not responsible.

#### § 842.132 Claims by NAFI employees.

Claims made by NAFI employees should be settled within the guidelines of this paragraph.

(a) *Personal injury in performance of duty and workers' compensation claims.* Claims for injuries arising out of performance of duty and workers' compensation claims are not within the scope of this subpart because the exclusive remedy is one of the following.

(1) Longshore and Harbor Workers' Compensation Act. This Act applies to NAFI civilian employees in the United States, its territories and possessions, and US citizen and resident NAFI civilian employees abroad.

(2) Local benefits for foreign national employees abroad.

(3) Military benefits because the injury is incident to service for offduty military personnel.

(b) *Property loss or damage incident to NAFI employment.* Claims for loss or damage to property incident to NAFI employment are settled under subpart D. Where appropriate, liability is computed, and initial demand is made upon the carrier, warehouse, or insurer, directing them to send further correspondence to the NAFI paying the claim.

#### § 842.133 Claims by customers, members, participants, or authorized users.

(a) *Customer complaints.* Do not automatically adjudicate customer complaint claims until a determination is made that a valid claim exists. Complaints and personal property losses suffered by customers of MWR sales or service operations are normally not within the scope of this subpart. Customer complaints may not be claims at

all. They may be no more than expressions of customer dissatisfactions. The activity manager is responsible for adjudicating and satisfying or otherwise disposing of a customer's complaint according to applicable NAFI regulations. Where possible, the activity manager resolves them by reimbursement, repair, or replacement in kind. However, if a complaint involving a claim cannot be satisfactorily settled under those procedures or includes a demand for consequential damage (such as for personal injury or property damage to other than the article purchased or serviced), process it as a tort claim.

(b) *Claims generated by concessionaires.* Most concessionaires must have commercial insurance. Any unresolved claims or complaints against concessionaires or their insurers are sent to the appropriate contracting officers.

#### § 842.134 Claims in favor of NAFIs.

(a) *Tort claims.* Use the procedures set forth in subpart J or L, as appropriate.

(b) *Contract claims.* See AFR 176-9 or AFR 147-14, as appropriate.

(c) *Claims involving dishonored checks and debts to NAFIs.* See AFR 176-2 and 176-10 or AFR 147-14, as appropriate.

(d) *Third Party Workers' Compensation Claims.* NAF employees are provided workers' compensation benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 901, *et seq.*) as extended by the Non-appropriated Fund Instrumentalities Act (5 U.S.C. 8171-8173). For injuries suffered by NAFI employees in the course and scope of their employment where third parties are responsible for the injuries, the employing NAFIs are entitled to recover from the responsible third parties for the compensation and medical benefits paid to the injured employees (33 U.S.C. 933). Third party claims are pursued on behalf of employing NAFIs by the servicing staff judge advocate. A NAFI also has the right of offset against an employee's pay amounts recovered directly by the employee from third parties as provided in the LHWCA.

#### § 842.135 Advance payments.

The procedures set out in subpart Q should be used for advance payments.