

ARTICLE 38 MAINTENANCE CRAFT

Article 38.2

SENIORITY

There are three definitions of seniority within the maintenance craft.

Article 38.2.E defines *Service Seniority* and includes all time in the Maintenance Craft regardless of installation.

Article 38.2.F defines *Installation Seniority* and is computed as all continuous time in the Maintenance Craft in the same installation. Installation seniority has applications such as determining preferred assignments of employees who enter into a regular workforce position in a particular occupational group and level on or after June 25, 1992 (Article 38.2.G.2); 2) the tie-breaker for rankings on Promotion Eligibility Registers within the same banded scores (Article 38.5.B.8); and the ranking of employees within an occupational group and level for excessing purposes under Article 12 (Article 38.3.K).

Article 38.2.G, *Seniority for Preferred Assignments* is often referred to as the “grandfather clause.” Article 38.2.G.1 applies to employees who entered or received a particular position in an occupational group and level prior to June 25, 1992. All employees in this category are considered senior for preferred assignment to all employees who entered or received a particular occupational group and level on or after June 25, 1992. Article 38.2.G is applied when making a selection from a preferred assignment register (PAR). Employees are ranked first pursuant to Article 38.2.G.1 prior to ranking employees pursuant to Article 38.2.G.2.

Article 38.3.C

The installation head is responsible for the day-to-day administration of seniority. Article 38.3.C shall be open to negotiations at the installation level with the designated agent of the APWU. The Local Memoranda of Understanding (pursuant to Article 30) may identify what type of seniority, *Service Seniority*, *Installation Seniority* or *Preferred Assignment Seniority* (Article 38.2.E, 38.2.F, and 38.2.G), is used for overtime, holiday or leave selection.

Article 38.3.F

When a maintenance employee is excessed to another installation pursuant to Article 12 “grandfather status” does not carry forward from one installation to another. Rather, “grandfather status” is installation specific. Seniority for Preferred Assignments referred to in Article 38.3.F.4 is an employee’s seniority, which is used for preferred assignments. An employee who is reassigned pursuant to Article 12 and who later returns to the same installation and occupational group would have “grandfather status” applied.

Article 38.3.G

The following are examples of the application of Article 38.3.G, *Reduction in Seniority for Preferred Assignments (salary levels reflect those in effect from 1991)*:

1. **EXAMPLE:** On June 1, 1991, an employee changed voluntarily from an Area Maintenance Technician, PS-8 (AMT8), to an Area Maintenance Specialist, PS-7 (AMS7), within the same installation. The employee was previously an AMS7 prior to being promoted to AMT8. The employee's seniority for preferred assignment was eight years, two months which was the time spent from entry into the AMS7 position. Seniority for preferred assignments would be established at the AMS7 period of seniority (eight years, two months) with no credit for the time spent as an AMT8.
2. **EXAMPLE:** On June 1, 1991, an employee changed voluntarily from an Area Maintenance Technician, PS-8 (AMT8), to a Maintenance Mechanic, PS-5, within the same installation. The employee was previously an Area Maintenance Specialist, PS-7 (AMS7), prior to being promoted to AMT8 in the same installation. Seniority for preferred assignments would be established as one day less than the junior Maintenance Mechanic, PS-5, or the employee's installation seniority, whichever is lesser.
3. **EXAMPLE:** On July 1, 1992, an employee changed voluntarily from an Area Maintenance Technician, PS-8 (AMT8), to an Area Maintenance Specialist, PS-7 (AMS7), within the same installation. The employee was previously an AMS7 prior to being promoted to AMT8. Seniority for preferred assignments would be determined by installation seniority in accordance with Article 38.2.G.2.

Article 38.3.J

Seniority tie breakers are listed in order in Article 38.3.J. Tie breakers are applied in order until the tie is broken.

Employees excessed into the Maintenance Craft under the provisions of Article 12 of the National Agreement, shall begin a new period of seniority.

Article 38.3.K

EXCESS EMPLOYEES

Installation seniority governs in identifying excess employees within an occupational group and level.

Employees excessed to lower level under Article 12 into or remaining in the Maintenance Craft shall receive saved grade. Employees receiving saved grade are required to request placement on Promotion Eligibility Registers in their former higher level.

An employee excessed from their occupational group retains retreat rights to that occupational group irrespective of whether that employee has an in-craft MSS rating.

Current Maintenance Craft employees who are reassigned pursuant to Article 12.5.C.4 (cross section within the craft and installation) retain retreat rights to their former section (occupational group and as identified in their LMOU). The application of their retreat rights, in this specific instance, occurs following the use of the PAR in the section (identified in their LMOU) from which they were excessed and immediately prior to using the PER.

Article 38.4

A Maintenance Craft notice of intent is posted and the duty assignment filled from within the installation where the vacancy exists. This location is where the employee is normally expected to begin and end tour.

e.g. - an Area Maintenance Technician (AMT) has their work hours assigned to a Field Maintenance District Office. The AMT begins tour at a 'domicile' office. That 'domicile' office is the AMT's official duty station for purposes of application of the Collective Bargaining Agreement and is where PAR and PER for that AMT duty assignment are established and utilized. This should be indicated on the employee's PS Form 50 lines 35-36 showing the employee's Duty Station and lines 32-34 can indicate a different Employ Office.

Article 38.4.A.1***POSTING – NOTICE OF INTENT***

Article 38.4.A.1 provides for the following:

- The posting of a Notice of Intent to fill vacant or newly established duty assignments.
- Notices of Intent are posted for a period of seven calendar days.
- A copy of the Notice of Intent shall be furnished to the local union.
- A duty assignment will be filled using the appropriate preferred assignment selection register and/or promotion eligibility register.
- An employee on sick leave or off-site training on the day of the posting shall be furnished a copy of any applicable Notice of Intent.
- An employee who is absent on annual leave and who has submitted a written request, stating the employee's mailing address, will be provided a copy of any applicable Notice of Intent by mail.

If an employee has been granted leave without pay (LWOP), determining whether an employee is automatically provided a copy of the Notice of Intent (NOI) or whether the employee must request a copy of the NOI is based on the paid leave category that the employee was otherwise eligible for. Examples:

- An employee who is off work due to illness or injury on the day of the posting elects to use LWOP instead of sick leave. The NOI would be provided to the employee.
- An employee who takes LWOP instead of annual leave is required to make written request for a copy of the NOI.

NEW POSITIONS IN AN INSTALLATION

When either a newly established position as defined in Article 1, Section 5 or an established position is authorized in an installation for the first time for which a

promotion eligibility register (PER) has not been created, management shall solicit applicants for inclusion on the PER by posting a notice on all official bulletin boards.

- This notice shall be posted for 30 calendar days.
- An applicant will be notified of the results no later than 150 days from the closing date, provided the application was properly completed.
- A Notice of Intent to fill the position should be posted within 14 days of receipt of PER results.

Article 38.4.A.2

Article 38.4.A.2 requires a Notice of Intent to be posted within thirty days of a position (duty assignment) becoming vacant, unless written notification is sent to the union with the reasons the duty assignment is being withheld. Article 38.4.A.2 allows an additional ten days for completing the reversion process, for a total of forty days to complete the reversion notification process.

Article 38.4.B

The “registers of eligible employees” addressed in Article 38.4.B includes both the PAR and PER.

Article 38.4.C

Article 38.4.C provides the information that must be listed on a Notice of Intent and includes: the “principal assignment area (e.g., section and/or location of activity)” and “physical or other special requirements unusual to the specific assignments.”

A Notice of Intent may cause more than one duty assignment to be filled from that posting. Prior to posting the Notice of Intent, management must determine if there are duty assignments that will be reverted or changed if they are vacated during the bidding process. These duty assignments must then be listed on the *Notice of Intent*. (Article 38.5.B.5)

Article 38.5.A

PREFERRED ASSIGNMENT REGISTERS (PAR)

A selection form is completed by employees which lists in numerical order the specific duty assignments in their current occupational group and level that they prefer over the one they currently hold. The listing of employees by occupational group and level, using the seniority under Article 38.2.G, constitutes the preferred assignment register (PAR).

Within fifteen calendar days of entry into the craft or installation, employees must be provided a written notice advising the employees that they have thirty days from receipt of the notice to apply and be placed on the preferred assignment register (PAR).

This provision is also applicable to employees on probation.

Article 38.5.A.7***PAR – PART-TIME REGULAR EMPLOYEES***

Part-time regular employees, who submit a preferred assignment register (PAR) form for a full-time duty assignment, will be awarded the vacant duty assignment before promoting a full-time employee from a lower salary level, or before any lateral transfer, provided the part-time regular employee is senior to the full-time employee in the lower level.

Article 38.5.B***PROMOTION ELIGIBILITY REGISTER (PER)***

The PER is the ranking of eligible employees for promotion to another occupational group, including to a different occupational group within the same level. Employees occupying duty assignments of a higher level than the position of the PER are not listed, even if they have an eligible rating.

Within fifteen calendar days of entry into the craft or installation, an employee must be provided a written notice advising the employee they have thirty days from receipt of the notice to request to be placed on the appropriate promotion eligibility register (PER).

New to craft/installation employees applying for the PER will receive their results within 150 days from the date of submission of the application.

If two or more maintenance occupational groups exist in an installation or in an installation where an employee is domiciled, a promotion eligibility register (PER) offering promotional opportunity for those occupational groups must be established in that installation.

Part-time regular employees can be placed on a PER, but will be considered only after all full-time regular employees on that PER have been selected or declined the opportunity for promotion. This rule applies to the PER only and does not relate to or impact the PAR selection process for part-time regular employees under Article 38.5.A.7.

Part-time regular employees are placed on the PER below full-time regulars consistent with their achieved scores.

The above provisions also apply to employees on probation.

Article 38.5.B.7***OPEN SEASON***

The March time frame noted in Article 38.5.B.7 is commonly referred to as “open season.” Open season occurs every three years. The next open season opportunities based on the current contract language will be March 1, **2018**. This opportunity is not for an employee who previously received an ineligible rating. An employee with an ineligible rating would use the update process.

All positions in an installation, both MSS and Non-MSS, are available for application for inclusion on the appropriate promotion eligibility register during open season.

Management will complete the initial MSS and Non-MSS process for inclusion on the promotion eligibility register within 150 days from March 31.

Filling of Maintenance Vacancies

ORDER FOR FILLING VACANT MAINTENANCE POSITIONS

The appropriate PAR and PER must be exhausted before considering other hiring options. To be considered qualified an employee must either be eligible under the current in-craft process for the position in question or be a Maintenance Craft employee in the same level and occupational group as the vacancy. Also, see Article 38.3.K for additional items regarding qualifications for reassignment or retreat under Article 12.

The following is the order for filling vacant maintenance positions:

1. Select the ranking employee on the appropriate preferred assignment register (PAR).
2. An unassigned regular employee may be assigned to the vacant duty assignment.
3. Activate retreat rights for excessing which occurred under 12.5.C.4 (within craft and installation).
4. Consider higher level qualified maintenance employees requesting change to lower level. A "previously submitted" written request for assignment to lower level must have been submitted prior to the close of the Notice of Intent (Article 38.5.A.10).
5. Select the ranking employee on the appropriate promotion eligibility register (PER).
6. Activate retreat rights for excessing which occurred under 12.5.C.5.
7. Consider Maintenance Craft employees requesting transfer before or after in-service procedures ("after in-service" is only in the event a within installation Maintenance employee is on the in-service register) in the following order:
 - a. When Maintenance Craft employees who have requested a transfer are considered first:
 1. Consider Maintenance Craft employees who are already qualified for the position in question.
 2. Consider Maintenance Craft employees who are not qualified for the position in question but have been afforded an opportunity to qualify under the provisions for qualifying for transfer (see EL-304, Qualifying for Transfer).
 - b. If in-service procedures are considered first:

1. Give priority consideration to career Maintenance Craft employees using the in-service register in score order.
 2. **Give consideration to remaining APWU represented Craft employees.**
 3. Consider other career **bargaining unit** postal employees, regardless of craft or position, on the in-service register in score order.
8. Consider current career employees for return to Maintenance Craft to a position previously held or to any position of equal or lower level for which he/she holds an eligibility rating. Employee must meet the time and eligibility criteria (outlined below).
 9. Consider former career postal employees for return to Maintenance Craft to a position previously held or to any position of equal or lower level for which he/she holds an eligibility rating. Applicants must meet the reinstatement requirements and the time and eligibility criteria (outlined below).
 10. Consider entrance register eligibles in score order.

ELIGIBILITY CRITERIA FOR RETURN TO THE MAINTENANCE CRAFT

Following is the eligibility criteria for consideration of current career employees and former career postal employees for return to Maintenance Craft positions:

- The employee must have held a position in the Maintenance Craft for at least one year.
- The employee must have an eligible rating (in-craft, in-service, or entrance) dated January 1, 1989 or later. (Note: Expired entrance eligibility ratings are acceptable as long as the test specifications have not changed. Also, with the exception of the entry-level custodian exam, maintenance examinations must not be administered noncompetitively).
- Current career employees can be reassigned only to a position previously held or to any position of equal or lower level for which the employee is qualified (no promotion). Selection must be within three years of leaving the Maintenance Craft.
- Former career postal employees can be reinstated only to a position previously held or to any position of equal or lower level for which the employee is qualified (no promotion). Selection must be within three years of leaving the Maintenance Craft. Former postal career employees must meet the eligibility requirements for reinstatement consideration.

Article 38.5.C

SUCCESSFUL APPLICANTS

Article 38.5.C provides that an employee who receives a promotion predicated on the successful completion of training and fails that training is declared inactive on the promotion eligibility register (PER). The PER shall be annotated with an asterisk indicating the employee's requirement to update. The employee may request an update.

Upon receipt of a qualifying updated score, the employee will be activated on the PER, the asterisk will be removed, and the employee will be ranked accordingly.

Article 38.5.C

Training required of successful applicants pursuant to Article 38.5.C.3 shall be scheduled and satisfactorily completed within a reasonable period of time which, absent unusual circumstances, shall not exceed one year from the date of the announcement of the successful applicant.

- There may be instances, for various reasons, where an employee who receives a promotion based on successful completion of training refuses to attend the training within the one year period. On a case by case basis, management must determine if the explanation given for the refusal is valid. If it is determined not to be valid, the employee is declared an unassigned regular in the employee's original occupational code and level, and the position reposted. The employee will be bypassed on the promotion eligibility register for this posting.
- If the explanation is valid, the time limit may be extended (on a one-time basis) until the receipt of training results from the National Center for Employees Development for the next scheduled course, provided the extension does not exceed one year.

Article 38.5.D

PROMOTION ELIGIBILITY REGISTER UPDATE

Article 38.5.D provides that an employee may request a PER update.

Management will complete the update within thirty-seven days.

The promotion eligibility register shall not be updated during the seven calendar days established under Article 38.4.A.1.

Article 38.6.A

TRAINING

Article 38.6.A.2 provides that as soon as approved training allocations are received at an installation, advance written notices will be published soliciting volunteers. This notice will be posted as far in advance as possible and the employee selected shall be notified as far in advance as possible.

If a training opportunity becomes available when two-week notice cannot be given (i.e. – unforeseen circumstance or changes in machine deployment schedules), the Local Union (e.g. - Maintenance Craft Director) will be notified and the opportunity will be identified as *short notice* and offered first to the senior qualified volunteer within the occupational group, level and tour where the need for the skill exists.

No employee shall be required to attend off site training with less than two (2) weeks' notice.

A list of those volunteers shall be posted and a copy furnished to the local union.

The senior volunteer within the identified occupational group and tour where the need for the skill exists will be selected for the training opportunity.

Conversely, if no volunteers are received the junior employee within the identified occupational group and tour will be chosen.

The identified occupational group and tour, if any, will be indicated on the written notice soliciting volunteers.

Unless otherwise agreed to in writing by the parties at the Local level, the seniority used for training selections is installation seniority as defined in Article 38.

The Postal Service has the right to require an employee to remain in a duty assignment pursuant to Article 38.6.A.5. However, the employee must be notified prior to the beginning of training that he/she will be required to remain in the duty assignment.

This may be accomplished by indicating the lock-in period on the notice of training billet(s) or by notifying the employee in writing.

When selection is made from the preferred assignment register (PAR), employees in the same occupational group and level as the vacancy are considered qualified and no additional training can be required prior to selection.

Article 38.7.C

RELIEF ASSIGNMENTS

Relief Assignments may be established pursuant to Article 38.7.C to cover absences of five working days or more for certain types of leave or training.

However, a continual failure to utilize a relief employee for bid coverage assignment may indicate the relief assignment is not required.

Hours worked pursuant to an employee's relief duty assignment do not qualify for out-of-schedule premium pay. Notification of the hours of the relief assignment is not required by Wednesday of the preceding week.

The establishment of relief assignments in the Maintenance Craft shall be kept to a minimum and within the same occupational groups and levels.

Article 38.7.E

NON-BARGAINING UNIT DETAILS

The duty assignment of a maintenance employee detailed to a non-bargaining unit position more than four months shall be declared vacant and posted and filled in accordance with Article 38. The four months is consecutive and is calculated by month. For example, employees detailed to a non-bargaining unit position on April 16 must end their detail the close of business on August 15 to retain their bid assignment.

Maintenance employees detailed to a non-bargaining unit position are ineligible to accept any promotion or preferred duty assignment(s) while on such detail.

Employees returning to the bargaining unit solely to prevent their duty assignment from being posted for bid violates the Agreement. However, it does not violate the Agreement for an employee to return to the bargaining unit for other reasons. An employee detailed to a non-bargaining unit position must return to the craft for a minimum of one continuous pay period to prevent circumvention of the intent of this provision. The reference to “*one continuous pay period*” means inclusive of days 1 – 14 of a specific pay period. However, while employees may take paid or unpaid leave during the 14-day period, in no event shall the entire 14 days be in a leave status.

Employees detailed to non-bargaining unit positions are not entitled to outside of schedule overtime (Out-of-Schedule Premium).

ARTICLE 38
QUESTIONS AND ANSWERS

MSS & PROMOTIONS

1. How are selections for maintenance positions now made?

Answer: Effective June 1, 2009, the RMSS is to be used to create and/or update In-craft, In-Service and Entrance registers. Previous In-craft registers are maintained intact with those qualifying under RMSS ranked below those **with a prior MSS eligible rating** on the current PER. In-Service and Entrance registers established prior to June 1, 2009 are closed and replaced by the RMSS.

2. Must an employee requesting an update in RMSS retake the 955 exam if they already have an eligible rating on the exam?

Answer: No. As an example, if a maintenance employee, while completing the MSS processes (in an attempt to become eligible for placement on an In-craft PER), received an *eligible rating* on exam 955 for the occupational group for which he/she applied, but subsequently received a rating of “*ineligible*” on the applicable structured interview, the employee, when later completing the update processes, may:

- a. opt to use the eligible **exam 955** rating he/she previously received, **and only complete the applicable structured interview as part of the update process, or**
- b. **retake the exam 955 and substitute** the new rating (**only** if a higher score is achieved), **prior to scheduling for the structured interview.**

3. How are the In-Craft non-MSS PERs administered?

Answer: The non-MSS PERs (for example Group Leader, Custodial and Maintenance Support Clerk) will have all the current eligible employees ranked in their installation seniority order.

4. Is an In-Service rating transferrable to an In-Craft rating?

Answer: Yes. When an In-service or Entrance rating is derived from the same evaluation components as the In-craft rating, a maintenance employee may transfer the rating to the In-craft PER when that PER is open for placement consistent with Article 38 (e.g.-during Open Season, new to the craft, etc.).

5. How are Maintenance Craft Promotion Eligibility Rosters (PERs) constructed under the current CBA?

Answer: Maintenance Craft PERs will have those rated eligible under the **pre-June 2009** MSS by installation seniority within the banded scores (see Article 38.5.B.8.a). Beneath those scores will be those rated eligible on the RMSS (**ratings after June 1, 2009**). within the banded scores (see Article 38.5.B.8.c). Installation seniority will be used within each banded score.

6. An employee can be demonstrated as having been on an in-craft PER prior to June 1, 2009. Their old PER numerical ratings are unavailable. How does the employee get on any PER where this applies?

Answer: In the absence of a numerical in-craft rating from the old MSS process, after first establishing the employee did have an eligible rating, to go on a PER the employee will be entered a MSS score of 20.1 and placed in such banded score as provided in Article 38.5.B.8.b. Essentially, at the foot of the MSS group and above the RMSS group of Employees' results.

7. If an employee receives a promotion, based on successful completion of training and fails that training, what happens to that employee's standing on the Promotion Eligibility Register?

Answer: The employee is declared as inactive on the Promotion Eligibility Register and the Promotion Eligibility Register shall be annotated with an asterisk indicating the employee's requirement to update using RMSS (EL-304). The employee may request an update **as per Article 38.5.D**. When the update score is received the employee's name will be activated on the PER and the asterisk removed and the employee ranked accordingly.

8. An employee receives a promotion based on successful completion of training and then, for various reasons, refuses to attend this training. Is this employee still promoted to the position after 365 days?

Answer: On a case by case basis, management must determine if the explanation given for the refusal is valid. If it is determined to not be valid, the employee will be declared an unassigned regular in his/her original occupational code and level and the position reposted. The employee will be bypassed on the Promotion Eligibility Register for this posting. If the explanation is valid and, on a one-time basis not to exceed another 365 days, the time limit may be extended until the receipt of training results from the National Center for Employee Development for the next scheduled course.

9. Can Industrial Electrical Service be used as a qualifying course for the Maintenance Mechanic, PS-7 position?

Answer: Yes. However, the Maintenance Mechanic, PS-7 will not be held responsible for passing the module concerned with finding selected sections of the National Electric Code.

TRAINING

1. I have an employee who is in a “promotion pending successful completion of training” status. The Notice of Intent listed a specific course that this employee must attend. Do I have to post this billet for volunteers?

Answer: Yes. The billet is posted for volunteers where the need exists; however, an employee in a “promotion pending successful completion of training” may be selected.

2. An employee has successfully completed equipment training in the past but none of that equipment is now in the office. Is the employee required to attend and successfully complete training on the new equipment?

Answer: Yes.

3. May an employee selected from an in-service register be placed into that position prior to the date (PS Form 50) of the new assignment?

Answer: Yes. An employee may be detailed to the position for training purposes for up to a two-week period ending with the reassignment.

DUTIES AND RESPONSIBILITIES

1. Can a Maintenance Mechanic, Mail Processing Equipment perform scanner alignments on mail processing equipment?

Answer: Yes. A Maintenance Mechanic, Mail Processing Equipment may perform alignments which are electro-mechanical or menu driven.

2. Can a Maintenance Mechanic, Mail Processing Equipment perform operational maintenance on equipment?

Answer: Yes. The position description, item 2 states “Observes the various components of the system in operation and applies appropriate testing methods and procedures to insure continued proper functioning”.

3. Can a PS-3 Custodian use a domestic type (canister, tank, upright, carpet, etc.) vacuum cleaner to perform interior cleaning?

Answer: Yes.

4. Can a Maintenance Mechanic, PS-7 reset and restart the Tray Management System?

Answer: Yes.

5. Can a Maintenance Mechanic, Mail Processing Equipment do simple replacement of a defective printed circuit board?

Answer: Yes, as long as the board is external to the computer.

6. Who will perform the overhaul of equipment previously done by Maintenance Overhaul Technical Service Centers (MOTSC)?

Answer: The work will become the responsibility of each individual office. This work will be reflected in the appropriate staffing document.

CUSTODIAL

1. What is the definition of “voluntary attrition”?

Answer: If the employee bids out, is promoted, quits, retires, or dies. **A transfer between installations or a reassignment under Article 12 is not “voluntary attrition”.**

GENERAL

1. If there is more than one residual duty assignment being filled by promotion, assignment, reassignment, hire, or, transfer at the same time, how are the duty assignments awarded?

Answer: Employees make selections based upon their installation Seniority. In the case of multiple employees with the same Installation Seniority, selections will be made based upon the other “tie-breakers” identified in Article 38.3.J.1-7.

2. Must an employee new to the craft or installation be assigned to a Preferred Duty Assignment?

Answer: Yes. Within 60 days the employee shall be selected from the Preferred Assignment Register to a Preferred Duty Assignment or be assigned in accordance with Article 38.5.A.8.

3. Where are Preferred Assignment Registers and Promotion Eligibility Registers established and posted?

Answer: If two or more maintenance occupational groups exist in an installation or in an installation where an employee is domiciled, a Promotion Eligibility Register for those occupational groups offering promotional opportunity must be established. If two or more employees hold duty assignments within the same occupational group, a Preferred Assignment Register must be established. These registers will be posted in the installation and will be used to fill vacant positions.

4. What is the procedure for stopping the maintenance bidding process in Article 38?

Answer: Prior to posting the Notice of Intent, management must determine if there are duty assignment(s) that will be reverted or changed if they are vacated during the bidding process. These duty assignment(s) must then be listed on the Notice of intent.