

MANATRON INC
Form S-8
October 14, 2004

Registration No. _____

SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

**FORM S-8
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933**

MANATRON, INC.

(Exact Name of Registrant as Specified in Its Charter)

Michigan
(State or Other Jurisdiction of
Incorporation or Organization)

**510 East Milham Avenue
Portage, Michigan**
(Address of Principal Executive Offices)

38-1983228
(I.R.S. Employer
Identification Number)

49002
(Zip Code)

**MANATRON, INC.
STOCK OPTION AND RESTRICTED STOCK PLAN OF 2004**

(Full Title of the Plan)

Paul R. Sylvester
President, Chief Executive Officer
Manatron, Inc.
510 East Milham Avenue
Portage, Michigan 49002

Copies to:

Stephen C. Waterbury
Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503-2487

(Name and Address of Agent For Service)
(269) 567-2900

(Telephone Number, Including Area Code, of Agent For Service)

CALCULATION OF REGISTRATION FEE

| Title Of Securities To Be Registered | Amount To Be Registered | Proposed Maximum Offering Price Per Share (1)(2) | Proposed Maximum Aggregate Offering Price(1)(2) | Amount Of Registration Fee |
|--------------------------------------|-------------------------|--------------------------------------------------|-------------------------------------------------|----------------------------|
| Common Stock, no par value | 200,000 shares(3)(4) | \$7.98 | \$1,596,000 | \$202.22 |

Item 6. Indemnification of Directors and Officers.

 The Company's Restated Articles of Incorporation and Bylaws generally require the Company to indemnify its directors and officers to the fullest extent permissible under Michigan law against all expenses (including amounts paid in settlement) incurred in any proceeding (whether or not such proceeding was by or in the right of the Company, a subsidiary or otherwise) in which they were a party because of their position as a director or officer of the Company or because they served at the request of the Company as a director, officer, employee

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or agent of another corporation or entity. The provision also allows for the advancement of litigation expenses at the request of a director or officer under certain circumstances. The Company has entered into indemnity agreements with its directors and officers that generally provide for indemnification to the fullest extent permissible under current or future Michigan law.

Sections 561 through 571 of the Michigan Business Corporation Act, as amended (the "**MBCA**") contain provisions governing the indemnification of directors and officers by Michigan corporations. The MBCA provides that a corporation has the power to indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, whether for profit or not, against expenses (including attorneys' fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding, if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders, and with respect to a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The MBCA permits partial indemnification for a portion of expenses (including reasonable attorneys' fees), judgments, penalties, fines and amounts paid in settlement to the extent the person is entitled to indemnification for less than the total amount. The termination of an action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders, and, with respect to a criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Indemnification of expenses (including attorneys' fees) and amounts paid in settlement is permitted in derivative actions by the MBCA, except that indemnification is not allowed for any claim, issue or matter in which such person has been found liable to the corporation unless and to the extent that a court decides indemnification is proper.

To the extent that a director or officer has been successful on the merits or otherwise in defense of an action, suit or proceeding described above (including a derivative action), or in defense of a claim, issue or matter in the action, suit or proceeding, he or she shall be indemnified against actual and reasonable expenses (including attorneys' fees) incurred by him or her in connection with the action, suit or proceeding, and any action, suit or

proceeding brought to enforce the mandatory indemnification provided under the MBCA.

A determination that the person to be indemnified meets the applicable standard of conduct and an evaluation of the reasonableness of the expenses incurred and amounts paid in settlement shall be made by (i) a majority vote of a quorum of the board of directors who are not

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parties or threatened to be made parties to the action, suit or proceeding, (ii) a majority vote of a committee of not less than two disinterested directors (if a quorum of the board of directors cannot be obtained), (iii) independent legal counsel, (iv) all "independent directors" not parties or threatened to be made parties to the action, suit or proceeding, or (v) the shareholders (excluding shares held by interested directors, officer, employees or agents).

Under the MBCA, a corporation may pay or reimburse the reasonable expenses incurred by a director, officer, employee or agent who is a party or threatened to be made a party to an action, suit or proceeding in advance of final disposition of the proceeding if the person furnishes the corporation a written undertaking, executed personally or on his or her behalf, to repay the advance if it is ultimately determined that he or she did not meet the applicable standard of conduct, which undertaking need not be secured.

The indemnification provisions of the MBCA are not exclusive of the rights to indemnification under a corporation's articles of incorporation or bylaws or by agreement. However, the total amount of expenses advanced or indemnified from all sources combined may not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for under the MBCA continues as to a person who ceases to be a director, officer, employee or agent.

The MBCA permits the Company to purchase insurance on behalf of its directors, officers, employees and agents against liabilities arising out of their positions with the Company, whether or not such liabilities would be within the above indemnification provisions. Pursuant to this authority, the Company maintains such insurance on behalf of its directors, officers and employees.

All of the above provisions could affect the liability of the Company's directors and officers in their capacities as such.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

The following exhibits are filed or incorporated by reference as part of this registration statement:

| <u>Exhibit</u> <u>Number</u> | <u>Document</u> |
|---------------------------------|-----------------|
|---------------------------------|-----------------|

statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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| <u>/s/ Stephen C. Waterbury</u> | Director | October 14, 2004 |
| *Stephen C. Waterbury | | |
| <u>/s/ Harry C. Vorys</u> | Director | October 14, 2004 |
| *Harry C. Vorys | | |
| <u>/s/ Gene Bledsoe</u> | Director | October 14, 2004 |
| *Gene Bledsoe | | |
| <u>/s/ W. Scott Baker</u> | Director | October 14, 2004 |
| *W. Scott Baker | | |
| *By | <u>/s/ Paul R. Sylvester</u> | |
| | Paul R. Sylvester | |
| | Attorney-in-Fact | |

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INDEX TO EXHIBITS

| <u>Exhibit</u> <u>Number</u> | <u>Document</u> |
|---------------------------------|-----------------|
|---------------------------------|-----------------|

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Restated Articles of Incorporation. Previously filed as an exhibit to the Company's Form 10-K Annual Report for the fiscal year ended April 30, 2004, and incorporated herein by reference.

- 4.2 Bylaws. Previously filed as an exhibit to the Company's Form 10-K Annual Report for the fiscal year ended April 30, 2004, and incorporated herein by reference.
 - 4.3 Rights Agreement dated June 2, 1997 between Manatron, Inc. and Registrar and Transfer Company. Previously filed as an exhibit to the Company's Form 8-A filed on June 11, 1997, and incorporated herein by reference.
 - 5 Opinion of Legal Counsel.
 - 23.1 Consent of Ernst & Young LLP.
 - 23.2 Consent of Legal Counsel. Included in Exhibit 5 above.
 - 24 Powers of Attorney.
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