

SECURITIES AND EXCHANGE COMMISSION

FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **1994-03-18**
SEC Accession No. **0000950152-94-000283**

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FILER

SADBURY INC

CIK: **811801** | IRS No.: **341546292** | State of Incorporation: **DE** | Fiscal Year End: **0531**
Type: **S-8** | Act: **33** | File No.: **033-52727** | Film No.: **94516701**
SIC: **3531** Construction machinery & equip

Business Address
30100 CHAGRIN BLVD
STE 203
CLEVELAND OH 44124
2164647026

As filed with the Securities and Exchange Commission on March 18, 1994

Registration No. 33 _____

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

SUDBURY, INC.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

Delaware
(STATE OR OTHER JURISDICTION OF
INCORPORATION OR ORGANIZATION)

34-154692
(I.R.S. EMPLOYER
IDENTIFICATION NO.)

30100 Chagrin Boulevard
Suite 203
Cleveland, OH 44124
(ADDRESS OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)
SUDBURY SAVINGS AND PROFIT SHARING PLAN
(FULL TITLE OF THE PLAN)

Mary C. Farrar
Corporate Secretary
30100 Chagrin Boulevard
Suite 203
Cleveland, OH 44124
(NAME AND ADDRESS OF AGENT FOR SERVICE)
(216) 464-7026 Ext. 129
(TELEPHONE NUMBER, INCLUDING AREA CODE OF AGENT FOR SERVICE)

CALCULATION OF REGISTRATION FEE

<S>	<C>	<C>	<C>	<C>
Title of Securities to Be Registered*	Amount to Be Registered	Proposed Maximum Offering Price Per Share (1)	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee (1)
Common Stock, par value \$.01 per share	450,000 shares	\$7.00	\$3,150,000	\$1,086.12

(1) Estimated solely for the purpose of calculating the registration fee. The price per share and aggregate offering price are based upon the average of the high and low sale prices of Sudbury, Inc.'s Common Stock, as reported by the NASDAQ National Market System on March 16, 1994.

*In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this Registration Statement also covers an indeterminate amount of interests to be offered or sold pursuant to the Plan.

Page 1 of __ Pages. Exhibit Index located at Page __.

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PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed or to be filed by Sudbury, Inc. (the "Company") with the Securities and Exchange Commission (the "Commission") are hereby incorporated or deemed to be incorporated in this Registration Statement by reference.

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended May 31, 1993. File No. 1-10023.
- (b) The Company's Quarterly Report on Form 10-Q for the quarter ended August 31, 1993. File No. 1-10023.
- (c) The Company's Quarterly Report on Form 10-Q for the quarter ended November 30, 1993. File No. 1-10023.
- (d) The description of the Company's Common Stock contained in the Company's Registration Statement on Form 8-A filed with the Commission pursuant to the Securities Exchange Act of 1934, as amended, ("Exchange Act") on September 11, 1992. File No. 1-10023.
- (e) All reports subsequently filed by the Company and the Sudbury Savings and Profit Sharing Plan with the Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities registered hereby have been sold or which de-registers all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing such documents.

Any statement contained in a document incorporated by, or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

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ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation -- a "derivative action"), if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard is applicable in the case of derivative actions, except that indemnification only extends to expenses (including attorneys' fees) incurred in connection with defense or settlement of such action, and the statute requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. The statute provides that it is not exclusive of other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise.

Section 102(b) (7) of the Delaware General Corporation Law permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for payments of unlawful dividends or unlawful stock repurchases or redemptions, or (iv) for any transaction from which the director derived an improper personal benefit. The first paragraph of Article Seventh of the Company's Certificate of Incorporation provides for such limitation of liability.

The Company maintains directors and officers insurance and has entered into Indemnification Agreements with each of its directors and executive officers.

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Additionally Article IV of the Company's By-laws provides as follows:

Each person who is made a party to any suit or proceeding, by reason of the fact that the person is or was a director or officer of the Company or is or was serving at the request of the Company as an employee or agent shall be indemnified and held harmless by the Company to the fullest extent authorized by the General Corporation Law of the State of Delaware, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred in connection therewith.

The right to indemnification includes the right to be paid by the Company the expenses incurred in defending any proceeding for which the right to indemnification is applicable in advance of its final disposition.

The rights to indemnification and to the advancement of expenses conferred by the By-laws shall not be exclusive of any other right which any person may have or acquire under any statute, the Company's certificate of incorporation, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

The Company may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Company or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of the State of Delaware.

The Company may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of the By-laws with respect to the indemnification and advancement of expenses of directors and officers of the Company.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS

- (4) (a) Second Restated Certificate of Incorporation of Sudbury, Inc. (Incorporated herein by reference is Exhibit (3) (b) to the Company's Form 10-K for the fiscal year ended May 31, 1993. File No. 1-10023).
- (4) (b) By-laws of Sudbury, Inc. (Incorporated herein by reference is Exhibit (3) (a) of the Company's Form 10-K for the fiscal year ended May 31, 1993. File No. 1-10023).

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- (5) (a) Internal Revenue Service determination letter.
- (5) (b) Opinion of Benesch, Friedlander, Coplan & Aronoff
- (23) (a) Consent of Ernst & Young.
- (23) (b) Consent of Benesch, Friedlander, Coplan & Aronoff (Contained in Exhibit (5) (b))
- (24) Powers of Attorney pursuant to which Directors have signed this Form S-8 Registration Statement.

ITEM 9. UNDERTAKINGS

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement (i) to include any prospectus required by section 10(a)(3) of the Securities Act of 1933 (the "Securities Act"), (ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement which, individually, or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement, and (iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.
- (2) That, for the purpose of determining any liability under the Securities

Act, 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.

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- (4) That, for the purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) 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.
- (5) Insofar as indemnification for liabilities arising under the Securities Act 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 Commission such indemnification is against public policy as expressed in the Securities 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 any 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 of whether or not such indemnification is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Pepper Pike, State of Ohio, on the 18th day of March, 1994.

SUDBURY, INC.
(Registrant)

By: /s/ Jacques R. Sardas

Jacques R. Sardas
Chairman and
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in their indicated capacities, as of March 18, 1994.

<TABLE>

<CAPTION>

SIGNATURE TITLE
----- -----

<S>

/s/ Jacques R. Sardas

Jacques R. Sardas

<C>

Chairman of the Board, President, Chief Executive
Officer (Principal Executive Officer) and Director

/s/ Mark E. Brody

Mark E. Brody

Vice President - Finance and Controller

(Principal Financial Officer and Principal Accounting Officer)

*

----- Director
Cloyd J. Abruzzo

*

----- Director
Jerry A. Cooper

*

----- Director
Preston Heller, Jr.

*

----- Director
James A. Karman

*

----- Director
David A. Preiser

*

----- Director
Thomas F. Slater

</TABLE>

The undersigned, by signing her name hereto, executes this Form S-8 Registration Statement pursuant to Powers of Attorney executed by the above-named Directors of the Registrants and filed with the Securities and Exchange Commission.

*By: /s/ Mary C. Farrar

Attorney-in-fact

March 18, 1994

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Pursuant to the requirements of the Securities Act of 1933, the Plan has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cleveland and State of Ohio, March 18, 1994.

BY: /s/ Mary C. Farrar

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SUDBURY, INC.
 FORM S-8
 EXHIBIT INDEX

<TABLE>

<CAPTION>

EXHIBIT NUMBER

SEQUENTIAL

PAGE NO.

<S>

<C>

<C>

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N/A

(4) (b) By-laws of Sudbury, Inc. (Incorporated herein by reference is Exhibit (3) (a) of the Company's Form 10-K for the fiscal year ended May 31, 1993).

N/A

(5) (a) Internal Revenue Service determination letter.

(5) (b) Opinion of Benesch, Friedlander, Coplan & Aronoff

(23) (a) Consent of Ernst & Young.

(23) (b) Consent of Benesch, Friedlander, Coplan & Aronoff (Contained in Exhibit (5) (b))

(24) Powers of Attorney pursuant to which Directors have signed this Form S-8 Registration Statement.

</TABLE>

INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: Dec. 15, 1993

Employer Identification Number:
34-1546292

SUDBURY, INC.
30100 CHAGRIN BLVD., SUITE 203
CLEVELAND, OHIO 44124

File Folder Number:
340028065

Person to Contact:

MILO ATLAS

Contact Telephone Number:
(513) 684-3241

Plan Name:

SUDBURY SAVINGS AND
PROFIT-SHARING PLAN

Plan Number: 003

Dear Applicant:

We have made a favorable determination on your plan, identified above, based on the information supplied. Please keep this letter in your permanent records.

Continued qualification of the plan under its present form will depend on its effect in operation. (See section 1.401-1(b)(3) of the Income Tax Regulations.) We will review the status of the plan in operation periodically.

The enclosed document explains the significance of this favorable determination letter, points out some features that may affect the qualified status of your employee retirement plan, and provides information on the reporting requirements for your plan. It also describes some events that automatically nullify it. It is very important that you read the publication.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other federal or local statutes.

This determination is subject to your adoption of the proposed amendments submitted in your letter dated November 19, 1993. The proposed amendments should be adopted on or before the date prescribed by the regulations under Code section 401(b).

This determination letter is applicable for the amendment(s) adopted on 10-2-92 & 7-27-93.

This determination letter is applicable for the plan adopted on May 31, 1991.

This letter is based upon the certification and demonstrations you submitted pursuant to Revenue Procedure 91-66. Therefore, the certification and demonstrations are considered an integral part of this letter. Accordingly, YOU MUST KEEP A COPY OF THESE DOCUMENTS AS A PERMANENT RECORD OR YOU WILL NOT BE ABLE TO RELY ON THE ISSUES DESCRIBED IN REVENUE PROCEDURE 91-66.

We have sent a copy of this letter to your representative as indicated in the power of attorney.

If you have questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Robert T. Johnson
District Director

Enclosures:
Publication 794

Exhibit (5) (b)

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LETTERHEAD

March 18, 1994

Board of Directors
Sudbury, Inc.
30100 Chagrin Blvd.
Cleveland, Ohio 44124

Ladies and Gentlemen:

Sudbury, Inc., a Delaware corporation (the "Company"), intends to file with the Securities and Exchange Commission under the Securities Act of 1933, as amended, a Registration Statement on Form S-8 (the "Registration Statement") with respect to (i) 450,000 shares of common stock, par value \$.01 per share (the "Common Stock") to be purchased from time to time pursuant to the Sudbury Savings and Profit Sharing Plan (the "401(k) Plan"); and (ii) the participation interests of employees of the Company in the 401(k) Plan.

You have requested our opinion in connection with the Company's filing of the Registration Statement. In this connection, we have examined and relied upon originals or copies, certified or otherwise identified to our satisfaction as being true copies, of all such records of the Company, and such agreements, certificates of officers of the Company and others, and such other documents, certificates and corporate or other records as we have deemed necessary as a basis for the opinion expressed in this letter, including, without limitation, the Company's Certificate of Incorporation, as amended, and the Registration Statement.

In our examination, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified or photostatic copies.

We have investigated such questions of law for the purpose of rendering the opinion in this letter as we have deemed necessary. We express no opinion in this letter concerning any law other than the General Corporation Law of the State of Delaware and the federal law of the United States of America.

BENESCH, FRIEDLANDER, COPLAN & ARONOFF

Board of Directors
Sudbury, Inc.
March 15, 1994

On the basis of and in reliance on the foregoing, we are of the opinion that the participation interests in the 401(k) Plan to be issued to the participants in such plan, when issued in accordance with the respective terms of such plans, will be legally issued.

The opinions in this letter are rendered only to the Company in connection with the filing of the Registration Statement. We consent to the filing of this letter as an exhibit to the Registration Statement. The opinions may not be relied upon by the Company for any other purpose. This letter may not be paraphrased, quoted or summarized, nor may it be duplicated or reproduced in part.

Very truly yours,

/s/ Benesch, Friedlander, Coplan &
Aronoff

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF

March 14, 1994 - 9:00pm - TXH
CLE2 - 109171.1B - 20329\1

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statement (Form S-8) and related prospectus pertaining to the Sudbury Savings and Profit Sharing Plan of our report dated August 20, 1993, with respect to the consolidated financial statement and schedules of Sudbury, Inc. included in its Annual Report (Form 10-K) for the year ended May 31, 1993, filed with the Securities and Exchange Commission.

ERNST & YOUNG

Cleveland, Ohio

March 17, 1994

SUDBURY, INC.
REGISTRATION STATEMENT

FORM S-8

Power of Attorney

The undersigned, a Director of Sudbury, Inc. (the "Company"), a Delaware corporation, does hereby constitute and appoint Jacques R. Sardas, Mark E. Brody or Mary C. Farrar, and any one of them, with full power of substitution and resubstitution, as attorneys or attorney to sign for him in his name any and all documents and forms, including all amendments and exhibits thereto, to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1933, as amended, concerning the Company's Registration on Form S-8 which relates to the issuance of the Company's Common Stock under the Company's Savings and Profit Sharing Plan authorized by the Board of Directors on February 14, 1994, with full power and authority to do and perform any and all acts and things whatsoever required or necessary to be done in connection therewith, as fully to all intents and purposes as he could do if personally present, and does hereby ratify and approve of the acts of said attorneys and any of them and any such substitute.

EXECUTED AT Cleveland, Ohio, this 18th day of March, 1994.

/s/ Cloyd J. Abruzzo

Cloyd J. Abruzzo

SUDBURY, INC.
REGISTRATION STATEMENT

FORM S-8

Power of Attorney

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his name any and all documents and forms, including all amendments and exhibits thereto, to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1933, as amended, concerning the Company's Registration on Form S-8 which relates to the issuance of the Company's Common Stock under the Company's Savings and Profit Sharing Plan authorized by the Board of Directors on February 14, 1994, with full power and authority to do and perform any and all acts and things whatsoever required or necessary to be done in connection therewith, as fully to all intents and purposes as he could do if personally present, and does hereby ratify and approve of the acts of said attorneys and any of them and any such substitute.

EXECUTED AT Cleveland, Ohio, this 18th day of March, 1994.

/s/ Jerry A. Cooper

Jerry A. Cooper

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Exhibit 24

SUDBURY, INC.
REGISTRATION STATEMENT

FORM S-8

Power of Attorney

The undersigned, a Director of Sudbury, Inc. (the "Company"), a Delaware corporation, does hereby constitute and appoint Jacques R. Sardas, Mark E. Brody or Mary C. Farrar, and any one of them, with full power of substitution and resubstitution, as attorneys or attorney to sign for him in his name any and all documents and forms, including all amendments and exhibits thereto, to be filed with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1933, as amended, concerning the Company's Registration on Form S-8 which relates to the issuance of the Company's Common Stock under the Company's Savings and Profit Sharing Plan authorized by the Board of Directors on February 14, 1994, with full power and authority to do and perform any and all acts and things whatsoever required or necessary to be done in connection therewith, as fully to all intents and purposes as he could do if personally present, and does hereby ratify and approve of the acts of said attorneys and any of them and any such substitute.

EXECUTED AT Cleveland, Ohio, this 18th day of March, 1994.

/s/ Preston Heller, Jr.

Preston Heller, Jr.

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SUDBURY, INC.
REGISTRATION STATEMENT

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EXECUTED AT Cleveland, Ohio, this 18th day of March, 1994.

/s/ James A. Karman

James A. Karman

- - - - -

SUDBURY, INC.
REGISTRATION STATEMENT

FORM S-8

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EXECUTED AT New York, New York, this 18th day of March, 1994.

/s/ David A. Preiser

David A. Preiser

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Exhibit 24

SUDBURY, INC.
REGISTRATION STATEMENT

FORM S-8

Power of Attorney

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EXECUTED AT Cleveland, Ohio, this 18th day of March, 1994.

/s/ Thomas F. Slater

Thomas F. Slater