

APOGEE ENTERPRISES INC  
Form S-8  
July 28, 2003

As filed with the Securities and Exchange Commission on July 28, 2003

Registration No. 333- \_\_\_\_\_

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-8**  
**REGISTRATION STATEMENT**

Under  
**THE SECURITIES ACT OF 1933**

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**APOGEE ENTERPRISES, INC.**

(Exact name of registrant as specified in its charter)

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**Minnesota**  
(State or other jurisdiction of  
incorporation or organization)

**41-0919654**  
(I.R.S. Employer  
Identification No.)

**7900 Xerxes Avenue South, Suite 1800**

**Minneapolis, Minnesota 55431**

(Address, including zip code, of registrant's principal executive offices)

**Apogee Enterprises, Inc.**

**2000 Employee Stock Purchase Plan**

(Full title of the plan)

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**Patricia A. Beithon, Esq.**

**Secretary and General Counsel**

**Apogee Enterprises, Inc.**

**7900 Xerxes Avenue South, Suite 1800**

**Minneapolis, Minnesota 55431**

**(952) 835-1874**

(Name, address and telephone number, including area code, of agent for service of process)

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*Copy to:*

**Robert A. Rosenbaum, Esq.**

**Dorsey & Whitney LLP**

**50 South Sixth Street, Suite 1500**

**Minneapolis, MN 55402**

**(612) 340-2600**

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**CALCULATION OF REGISTRATION FEE**

<b>Title of securities to be registered</b>	<b>Amount to be registered(1)</b>	<b>Proposed maximum offering price per share(2)</b>	<b>Proposed maximum aggregate offering price(2)</b>	<b>Amount of registration fee</b>
Common Stock				
(\$ .33 1/3 par value per share)(3)	500,000	\$9.53	\$4,765,000	\$385.49

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- (1) The number of shares of common stock being registered is subject to adjustment to prevent dilution resulting from stock splits, stock dividends or similar transactions.
  - (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h)(1) and (c) under the Securities Act of 1933, as amended. The proposed maximum aggregate offering price is based upon the average of the high and low prices of the registrant's common stock traded on the Nasdaq National Market as reported in the consolidated reporting system on July 24, 2003.
  - (3) Includes preferred share purchase rights which are attached to and trade with the registrant's common stock.
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**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents, which have been filed with the Securities and Exchange Commission (the Commission) by Apogee Enterprises, Inc. (the Company) are incorporated by reference in this Registration Statement:

- (a) The Company's Annual Report on Form 10-K for the fiscal year ended March 1, 2003; and
- (b) The description of the Company's common stock contained in any registration statement of the Company filed under the Securities Exchange Act of 1934, as amended, and any amendment or report filed for the purpose of updating such description.

All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, subsequent to the date hereof and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold shall be deemed to be incorporated by reference herein and to be a part hereof from the respective dates of filing of such documents.

**Information Regarding Financial Statements**

**Incorporated by Reference into this Registration Statement**

On April 11, 2002, we determined not to re-engage our independent auditors, Arthur Andersen LLP (Arthur Andersen), and to appoint Deloitte & Touche LLP as our new independent auditors. We have attempted and have been unable to obtain from Arthur Andersen a consent for the reissuance of their report on our financial statements as of and for the fiscal years ended March 2, 2002, and March 3, 2001, as required by Section 7 of the Securities Act of 1933, as amended (the Securities Act). Under these circumstances, Rule 437a under the Securities Act permits us to file this Registration Statement without Arthur Andersen's consent. Because Arthur Andersen has not consented to the incorporation by reference of their report into this Registration Statement, your right of recovery under Section 11 of the Securities Act may be limited, as you will not be able to assert claims against Arthur Andersen under Section 11 of the Securities Act for any untrue statements of a material fact contained, or any omissions to state a material fact required to be stated, in our consolidated financial statements for the fiscal years ended March 2, 2002, and March 3, 2001. In addition, the ability of Arthur Andersen to satisfy any claims (including claims arising from Arthur Andersen's provision of auditing and other services to us) may be limited as a practical matter due to events regarding Arthur Andersen.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

The Company is subject to Minnesota Statutes, Chapter 302A. Section 302A.521 provides that a corporation shall indemnify any person made or threatened to be made a party to a proceeding by reason of the former or present official capacity (as defined) of such person against judgments, penalties, fines (including, without limitation, excise taxes assessed against such person with respect to an employee benefit plan), settlements and reasonable expenses, including attorneys' fees and disbursements, incurred by such person in connection with the

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proceeding, if, with respect to the acts or omissions of such persons complained of in the proceeding, such person (1) has not been indemnified therefor by another organization or employee benefit plan; (2) acted in good faith; (3) received no improper personal benefit and Section 302A.255 (with respect to director conflicts of interest), if applicable, has been satisfied; (4) in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and (5) reasonably believed that the conduct was in the best interests of the corporation in the case of acts or omissions in such person's official capacity for the corporation, or reasonably believed that the conduct was not opposed to the best interests of the corporation in the case of acts or omissions in such person's official capacity for other affiliated organizations.

The Company's Restated Bylaws provide that the Company shall indemnify such persons, for such liabilities and expenses, in such manner, under such circumstances, and to such extent as required or permitted by Section 302A.521, as enacted or amended.

The Company also maintains an insurance policy or policies to assist in funding indemnification of directors and officers of the Company for certain liabilities.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

- 4.1 Restated Articles of Incorporation (incorporated by reference to Exhibit 3A to the Company's Annual Report on Form 10-K for the year ended February 27, 1988).
- 4.2 Restated Bylaws of the Company (incorporated by reference to Exhibit 3B to the Company's Quarterly Report on Form 10-Q for the quarter ended May 30, 1998).
- 4.3 Amended and Restated Rights Agreement, dated November 12, 2001, between the Company and Bank of New York (incorporated by reference to the Company's Form 8-A/A filed on November 30, 2001).
- 23.1 Consent of Deloitte & Touche LLP.

**Item 9. Undertakings.**

(a) 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, as amended (the "Securities Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume

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and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective 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;

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provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if 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 Section 15(d) of the Securities Exchange Act of 1934 (the Exchange Act ) that are incorporated by reference 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.

(b) The undersigned registrant hereby undertakes that, for 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 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.

(c) 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 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 Securities Act and will be governed by the final adjudication of such issue.





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/s/ James L. Martineau

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Director

James L. Martineau

/s/ Stephen C. Mitchell

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Director

Stephen C. Mitchell

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/s/ Ray C. Richelsen

Director

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Ray C. Richelsen

/s/ Michael E. Shannon

Director

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Michael E. Shannon

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**Exhibit Index**

<b>Exhibit Number</b>	<b>Description</b>
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