

AIRGAS INC
Form S-8
August 09, 2006

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As filed with the Securities and Exchange Commission on August 9, 2006

Registration No. 333-_____

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM S-8
REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933
AIRGAS, INC.**

(Exact name of registrant as specified in its charter)

Delaware

56-0732648

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer Identification Number)

259 North Radnor-Chester Road, Suite 100
Radnor, Pennsylvania

19087-5283

(Address of Principal Executive Offices)

(Zip Code)

**AIRGAS, INC.
DEFERRED COMPENSATION PLAN II**

(Full Title of the Plan)

DEAN A. BERTOLINO, ESQUIRE
AIRGAS, INC.

Radnor Court

259 North Radnor-Chester Road, Suite 100
Radnor, Pennsylvania 19087-5283

(Name and address of agent for service)

(610) 687-5253

(Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered (1)	Amount to be Registered	Proposed Maximum Offering Price per Obligation	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee (3)
Deferred Compensation Obligations	\$6,000,000	100%	\$6,000,000	\$ 642

(1) The deferred
compensation

obligations are unsecured obligations of Airgas, Inc. (the Company) to pay deferred compensation in the future in accordance with the terms of the Airgas, Inc. Deferred Compensation Plan II for certain eligible employees.

- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) based upon the maximum amount of compensation which may be deferred under the Airgas, Inc. Deferred Compensation Plan II.
- (3) Calculated pursuant to Section 6(b) of the Securities Act of 1933, as amended, as follows:
Proposed maximum aggregate offering price multiplied by 0.000107.

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Airgas, Inc. Deferred Compensation Plan II

Opinion of Dechert LLP

Consent of KPMG LLP

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PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents are incorporated by reference in this registration statement:

- (a) The Company's annual report on Form 10-K for the fiscal year ended March 31, 2006, filed on June 14, 2006 pursuant to Section 13(a) of the Securities Exchange Act of 1934 (the "1934 Act"); and
- (b) All other reports filed by the Company pursuant to Section 13(a) or Section 15(d) of the 1934 Act since the end of the Company's fiscal year ended March 31, 2006.

In addition, all documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the 1934 Act, after the date hereof, prior to the end of this offering shall be deemed to be incorporated by reference in this registration statement and to be part hereof from the date of filing such documents.

Item 4. Description of Securities.

Under the Airgas, Inc. Deferred Compensation Plan II (the "Plan"), the Registrant will provide eligible employees and non-employee directors the opportunity to enter into agreements for the deferral of a specified percentage of their annual compensation and/or bonus award. The obligations of the Registrant under such agreements (the "Obligations") will be unsecured general obligations of the Registrant to pay the deferred compensation in the future in accordance with the terms of the Plan, and will rank pari passu with other unsecured and unsubordinated indebtedness of the Registrant, from time to time outstanding. The amount of compensation and/or bonus award to be deferred by each participating employee or non-employee director (a "Participant") will be determined in accordance with the Plan based on elections by each Participant.

Each Participant's deferred amounts shall be credited to a bookkeeping account maintained on the books of the Company (an "Account"). Separate sub-accounts may be maintained on the books of the Company to reflect the different distribution elections chosen under the Plan by each Participant. In addition, Participants may make elections as to how their respective Account balances shall be deemed invested among certain options designated by the committee appointed by the Board of Directors of the Company to administer the Plan (the "Committee"). Participant Accounts will be credited or debited to reflect earnings or losses that would have been realized if the deferred amounts actually were invested in accordance with the Participant's investment elections.

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Amounts credited to a Participant's Account will be payable either on a Specified Date (see description below), upon the Participant's separation from service or upon the earlier of such events. A Participant may elect to have distributions made from his or her account in the form of a lump sum or annual, monthly or quarterly installments for a period of between two (2) to fifteen (15) years.

A Participant may elect, at the beginning of each calendar year, to designate a distribution date (a Specified Date) with respect to his or her deferrals for such Plan Year. The Specified Date must occur no earlier than during the third year following the year in which the deferrals designated for distribution were credited to the Participant's Account. A Participant may elect to further defer the distribution beyond the Specified Date by electing, at least twelve (12) months prior to the Specified Date, a new Specified Date which is at least five (5) years following the previous Specified Date.

Each Participant shall have the right, at any time, to designate one or more persons or entities as beneficiary (both primary as well as contingent beneficiaries) to whom benefits under the Plan shall be paid in the event of the Participant's death prior to complete distribution of the Participant's Account. If any Participant fails to properly designate a beneficiary, if the designation is void, or if the designated beneficiary dies before the Participant or before complete distribution of the Participant's benefits, the Participant's beneficiary shall be the Participant's surviving spouse, or, failing that, the Participant's estate.

Upon a finding that a Participant has suffered an unforeseeable emergency, the Committee may, in its sole discretion, cause distribution of all or any portion of the Participant's Account. However, the amount of such distribution shall be limited to the amount reasonably necessary to meet the Participant's needs resulting from the unforeseeable emergency (plus the amount necessary to pay any taxes applicable to the distribution).

There is no trading market for the Obligations. The Obligations are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment. Any attempt by any person to transfer or assign benefits under the Plan, will be null and void. The Obligations are not convertible into any other security of the Registrant. No trustee has been appointed to take action with respect to the Obligations and each Participant in the Plan will be responsible for enforcing his or her own rights with respect to the Obligations. The Registrant may establish a grantor, or rabbi, trust to serve as a source of funds from which it can satisfy the Obligations. Participants in the Plan will have no rights to any assets held by a rabbi trust, except as general creditors of the Registrant. Assets of any rabbi trust will at all times be subject to the claims of the Registrant's general creditors.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

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Item 6. Indemnification of Directors and Officers.

The Delaware General Corporation Law permits the indemnification by a Delaware corporation of its directors, officers, employees, and other agents 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 derivative actions which are by or in the right of the corporation) 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 illegal. A similar standard of care is applicable in the case of derivative actions, except the indemnification only extends to expenses (including attorneys' fees) incurred in connection with defense or settlement of such an action and requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation.

The Company's certificate of incorporation provides that each person who was or is made a party to, or is involved in, any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Company (or was serving at the request of the Company as a director, officer, employee or agent for another entity) while serving in such capacity will be indemnified and held harmless by the Company to the full extent authorized or permitted by Delaware law. The certificate also provides that the Company may purchase and maintain insurance and may also create a trust fund, grant a security interest and/or use other means (including establishing letters of credit, surety bonds and other similar arrangements) and may enter into contracts providing for indemnification, to ensure full payment of indemnifiable amounts.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

- 4 Airgas, Inc. Deferred Compensation Plan II.
- 5 Opinion of Dechert LLP.
- 23.1 Consent of KPMG LLP.
- 23.2 Consent of Dechert LLP (included in Exhibit 5).
- 24 Power of Attorney (set forth on the signature page of this Registration Statement).

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Item 9. Undertakings.

Undertakings required by Item 512(a) of Regulation S-K:

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;

(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 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; provided, however, that paragraphs (1)(i) and (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 Section 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.

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(4) If the registrant is a foreign private issuer, to file a post-effective amendment to the registration statement to include any financial statements required by Item 8.A. of Form 20-F at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Act need not be furnished, provided that the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, with respect to registration statements on Form F-3, a post-effective amendment need not be filed to include financial statements and information required by Section 10(a)(3) of the Act or Rule 3-19 of Regulation S-X if such financial statements and information are 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 that are incorporated by reference in the Form F-3.

Undertakings required by Item 512(b) of Regulation S-K:

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 Section 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.

Undertakings required by Item 512(h) of Regulation S-K:

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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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 Delaware County, Pennsylvania, on the 9th day of August, 2006.

AIRGAS, INC.

By: /s/ Peter McCausland

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

By: /s/ Roger F. Millay

Roger F. Millay
Senior Vice President and
Chief Financial Officer
(Principal Financial Officer)

By: /s/ Robert M. McLaughlin

Robert M. McLaughlin
Vice President and Controller
(Principal Accounting Officer)

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POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Peter McCausland, Dean A. Bertolino and Roger F. Millay, and each or any of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their, his or her substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the date indicated:

Signature	Title	Date
/s/ Peter McCausland		
Peter McCausland	Chairman & Director	August 9, 2006
/s/ William O. Albertini		
William O. Albertini	Director	August 9, 2006
/s/ W. Thacher Brown		
W. Thacher Brown	Director	August 9, 2006
/s/ James W. Hovey		
James W. Hovey	Director	August 9, 2006
/s/ Richard C. III		
Richard C. III	Director	August 9, 2006
/s/ Paula A. Sneed		
Paula A. Sneed	Director	August 9, 2006
/s/ David M. Stout		
David M. Stout	Director	August 9, 2006
/s/ Lee M. Thomas		
Lee M. Thomas	Director	August 9, 2006
/s/ Robert L. Yohe		

Robert L. Yohe

Director
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August 9, 2006