lation that elaborated on the meaning of this use of the word “disability” would fall within the scope both of the basic definitional provision and also the substantive provisions of “this” later subchapter, for the word “disability” appears in both places.

There is no reason to believe that Congress would have wanted to deny the EEOC the power to issue such a regulation, at least if the regulation is consistent with the earlier statutory definition and with the relevant interpretations by other enforcement agencies. The physical location of the definitional section seems to reflect only drafting or stylistic, not substantive, objectives. And to pick and choose among which of “this subchapter[s]” words the EEOC has the power to explain would inhibit the development of law that coherently interprets this important statute.

1. Civil Rights ⇔ 173.1

Employee’s amblyopia, that is, poor vision caused by abnormal visual development secondary to abnormal visual stimulation, was a “physical impairment” within meaning of the ADA. Americans with Disabilities Act of 1990, § 3(2)(A), as amended, 42 U.S.C.A. § 12102(2)(A); 29 C.F.R. § 1630.2(h)(1).

See publication Words and Phrases for other judicial constructions and definitions.

2. Civil Rights ⇔ 173.1

Seeing was one of employee’s major life activities, for purposes of the ADA. Americans with Disabilities Act of 1990, § 3(2)(A), as amended, 42 U.S.C.A. § 12102(2)(A); 29 C.F.R. § 1630.2(i).

3. Civil Rights ⇔ 107(1)

One fundamental statutory requirement of the ADA is that only impairments causing substantial limitations in individuals’ ability to perform major life activities constitute disabilities. Americans with Disabilities Act of 1990, § 3(2)(A), as amended, 42 U.S.C.A. § 12102(2)(A).

4. Civil Rights ⇔ 107(1)

While the ADA addresses substantial limitations on major life activities, not utter inabilities, it concerns itself only with limitations that are in fact substantial, and not merely different. Americans with Disabili-

5. Civil Rights ⇐107(1)

In judging whether an individual possesses a “disability” within meaning of the ADA, mitigating measures must be taken into account, including both measures undertaken with artificial aids, like medications and devices, and measures undertaken, whether consciously or not, with the body’s own systems. Americans with Disabilities Act of 1990, § 3(2)(A), as amended, 42 U.S.C.A. § 12102(2)(A).

See publication Words and Phrases for other judicial constructions and definitions.

6. Civil Rights ⇐107(1)


7. Civil Rights ⇐107(1)

While some impairments may invariably cause a substantial limitation of a major life activity, individuals with monocular vision are not per se “disabled” within meaning of the ADA but, rather, must prove their disability on a case-by-case basis by offering evidence that the extent of limitation on a major life activity in terms of their own experience is substantial. Americans with Disabilities Act of 1990, § 3(2)(A), as amended, 42 U.S.C.A. § 12102(2)(A).

8. Civil Rights ⇐107(1)


9. Civil Rights ⇐107(1)


10. Civil Rights ⇐173.1

In context of determining whether former employee, a truck driver with monocular vision, was a “qualified” individual with a disability under the ADA, former employer could use its compliance with applicable Department of Transportation (DOT) safety regulations to justify its visual-acyuity job qualification standard, despite existence of experimental program in which DOT vision standard could be waived in an individual case. Americans with Disabilities Act of 1990, §§ 101(8), 102(a), as amended, 42 U.S.C.A. §§ 12111(8), 12112(a); 49 C.F.R. § 391.41(b)(10).

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader.

Syllabus *

Before beginning a truckdriver’s job with petitioner, Albertson’s, Inc., in 1990, respondent, KIRKINGBURG, was examined to see if he met the Department of Transportation's basic vision standards for commercial truckdrivers, which require corrected distant visual acuity of at least 20/40 in each eye and distant binocular acuity of at least 20/40. Although he has amblyopia, an uncorrectable condition that leaves him with 20/200 vision in his left eye and thus effectively monocular vision, the doctor erroneously certified that he met the DOT standards. When his vision was correctly assessed at a 1992 physical, he was told that he had to get a waiver of the DOT standards under a waiver program begun that year. Albertson’s, however, fired him for failing to meet the basic DOT vision standards and refused to rehire him after he received a waiver. KIRKINGBURG sued Albertson’s, claiming that firing him violated the Americans with Disabilities Act of 1990 (ADA). In granting summary judgment for Albertson’s, the District Court found that KIRKINGBURG was not qualified without an accommodation because he could not meet the basic DOT standards and that the waiver program did not alter those standards. The Ninth Circuit reversed, finding that KIRKINGBURG had established a disability under the

Act by demonstrating that the manner in which he sees differs significantly from the manner in which most people see; that although the ADA allowed Albertson’s to rely on Government regulations in setting a job-related vision standard, Albertson’s could not use compliance with the DOT regulations to justify its requirement because the waiver program was a legitimate part of the DOT’s regulatory scheme; and that although Albertson’s could set a vision standard different from the DOT’s, it had to justify its independent standard and could not do so here.

Held:

1. The ADA requires monocular individuals, like others claiming the Act’s protection, to prove a disability by offering evidence that the extent of the limitation on a major life activity caused by their impairment is substantial. The Ninth Circuit made three missteps in determining that Kirkingburg’s amblyopia meets the ADA’s first definition of disability, i.e., a physical or mental impairment that “substantially limits” a major life activity, 42 U.S.C. § 12101(2)(A). First, although it relied on an Equal Employment Opportunity Commission regulation that defines “substantially limits” as requiring a “significant restriction” in an individual’s manner of performing a major life activity, see 29 CFR § 1630.2(j)(ii), the court actually found that there was merely a significant “difference” between the manner in which Kirkingburg sees and the manner in which most people see. By transforming “significant restriction” into “difference,” the court undercut the fundamental statutory requirement that only impairments that substantially limit the ability to perform a major life activity constitute disabilities. Second, the court appeared to suggest that it need not take account of a monocular individual’s ability to compensate for the impairment, even though it acknowledged that Kirkingburg’s brain had subconsciously done just that. Mitigating measures, however, must be taken into account in judging whether an individual has a disability, Sutton v. United Airlines, Inc., 527 U.S., at 482, 119 S.Ct. 2139, 144 L.Ed.2d 450, whether the measures taken are with artificial aids, like medications and devices, or with the body’s own systems. Finally, the Ninth Circuit did not pay much heed to the statutory obligation to determine a disability’s existence on a case-by-case basis. See 42 U.S.C. § 12101(2). Some impairments may invariably cause a substantial limitation of a major life activity, but monocularity is not one of them, for that category embraces a group whose members vary by, e.g., the degree of visual acuity in the weaker eye, the extent of their compensating adjustments, and the ultimate scope of the restrictions on their visual abilities. Pp. 2167–2169.

2. An employer who requires as a job qualification that an employee meet an otherwise applicable federal safety regulation does not have to justify enforcing the regulation solely because its standard may be waived experimentally in an individual case. Pp. 2169–2174.

(a) Petitioner’s job qualification was not of its own devising, but was the visual acuity standard of the Federal Motor Carrier Safety Regulations, and is binding on Albertson’s, see 49 CFR § 391.11. The validity of these regulations is unchallenged, they have the force of law, and they contain no qualifying language about individualized determinations. Were it not for the waiver program, there would be no basis for questioning petitioner’s decision, and right, to follow the regulations. Pp. 2169–2171.

(b) The regulations establishing the waiver program did not modify the basic visual acuity standard in a way that disenfranchises an employer like Albertson’s to insist on the basic standard. One might assume that the general regulatory standard and the regulatory waiver standard ought to be accorded equal substantive significance, but that is not the case here. In setting the basic standards, the Federal Highway Administration, the DOT agency responsible for overseeing the motor carrier safety regulations, made a considered determination about the visual acuity level needed for safe operation of commercial motor vehicles in interstate commerce. In contrast, the regulatory record made it plain that the waiver program at issue in this case was simply an experiment proposed as a means of obtaining
data, resting on a hypothesis whose confirmation or refutation would provide a factual basis for possibly relaxing existing standards. Pp. 2171–2174.

(c) The ADA should not be read to require an employer to defend its decision not to participate in such an experiment. It is simply not credible that Congress enacted the ADA with the understanding that employers choosing to respect the Government’s visual acuity regulation in the face of an experimental waiver might be burdened with an obligation to defend the regulation’s application according to its own terms. P. 2174.

143 F.3d 1228, reversed.

SOUTER, J., delivered the opinion for a unanimous Court with respect to Parts I and III, and the opinion of the Court with respect to Part II, in which REHNQUIST, C. J., and O’CONNOR, SCALIA, KENNEDY, THOMAS, and GINSBURG, JJ., joined.

THOMAS, J., filed a concurring opinion, post, p. 2174.

Corbett Gordon, Portland, OR, for petitioner.

Scott N. Hunt, for respondent.

Edward C. DuMont, Washington, DC, for United States as amicus curiae, by special leave of the Court.

For U.S. Supreme Court briefs, see:
1999 WL 133026 (Pet.Brief)
1999 WL 164438 (Resp.Brief)
1999 WL 176963 (Resp.Brief)
1999 WL 373887 (Reply.Brief)

* Justice STEVENS and Justice BREYER join Parts I and III of this opinion.


2. Visual acuity has a number of components but most commonly refers to “the ability to determine the presence of or to distinguish between more than one identifying feature in a visible target.” G. von Noorden, Binocular Vision and Ocular Motility 114 (4th ed.1990). Herman Snellen was a Dutch ophthalmologist who, in 1862, devised the familiar letter chart still used to measure visual acuity. The first figure in the Snellen score refers to distance between the viewer and the visual target, typically 20 feet. The second corresponds to the distance at which a person with normal acuity could distinguish letters of the size that the viewer can distinguish at 20 feet. See C. Snyder, Our Ophthalmic Heritage 97–99 (1967); D. Vaughan, T. Asburg, & P. Riordan–Eva, General Ophthalmology 30 (15th ed.1999).
in his left eye and monocular vision in effect.\(^3\) Despite Kirkingburg’s weak left eye, the doctor erroneously certified that he met the DOT’s basic vision standards, and Albertson’s hired him.\(^4\)

In December 1991, Kirkingburg injured himself on the job and took a leave of absence. Before returning to work in November 1992, Kirkingburg went for a further physical as required by the company. This time, the examining physician correctly assessed Kirkingburg’s vision and explained that his eyesight did not meet the basic DOT standards. The physician, or his nurse, told Kirkingburg that in order to be legally qualified to drive, he would have to obtain a waiver of its basic vision standards from the DOT. See 143 F.3d, at 1230; App. 284–285. The doctor was alluding to a scheme begun in July 1992 for giving DOT certification to applicants with deficient vision who had three years of recent experience driving a commercial vehicle without a license suspension or revocation, involvement in a reportable accident in which the applicant was cited for a moving violation, conviction for certain driving-related offenses, citation for certain serious traffic violations, or more than two convictions for any other moving violations. A waiver applicant had to agree to have his vision checked annually for deterioration, and to report certain information about his driving experience to the Federal Highway Administration (FHWA or Administration), the agency within the DOT responsible for overseeing the motor carrier safety regulations. See 57 Fed.Reg. 31458, 31460–31461 (1992).\(^5\) Kirkingburg applied for a waiver, but because he could not meet the basic DOT vision standard Albertson’s fired him from his job as a truckdriver.\(^6\) In early 1993, after he had left Albertson’s, Kirkingburg received a DOT waiver, but Albertson’s refused to rehire him. See 143 F.3d, at 1231.

Kirkingburg sued Albertson’s, claiming that firing him violated the ADA.\(^7\) Albertson’s moved for summary judgment solely on the ground that Kirkingburg was “not ‘otherwise qualified’ to perform the job of truck driver with or without reasonable accommodation.” App. 39–40; see id., at 119. The District Court granted the motion, ruling that Albertson’s had reasonably concluded that Kirkingburg was not qualified without an accommodation because he could not, as admitted, meet the basic DOT vision standards. The court held that giving Kirkingburg time to get a DOT waiver was not a required reasonable accommodation because the waiver program was “a flawed experiment that has not altered the DOT vision requirements.” Id., at 120.

A divided panel of the Ninth Circuit reversed. In addition to pressing its claim that Kirkingburg was not otherwise qualified, Albertson’s for the first time on appeal took the position that it was entitled to summary for the waivers and requested comments in June. See id., at 23370. After receiving and considering the comments, the Administration announced its final decision to grant waivers in July.

6. Albertson’s offered Kirkingburg at least one and possibly two alternative jobs. The first was as a “yard hostler,” a truck driver within the premises of petitioner’s warehouse property, the second as a tire mechanic. The company apparently withdrew the first offer, though the parties dispute the exact sequence of events. Kirkingburg turned down the second because it paid much less than driving a truck. See App. 14–16, 41–42.

7. The ADA provides: “No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a).
judgment because Kirkingburg did not have a disability within the meaning of the Act. See id., at 182–185. The Court of Appeals considered but rejected the new argument, concluding that because Kirkingburg had presented “uncontroverted evidence” that his vision was effectively monocular, he had demonstrated that “the manner in which he sees differs significantly from the manner in which most people see.” 143 F.3d, at 1232. That difference in manner, the court held, was sufficient to establish disability. Ibid.

The Court of Appeals then addressed the ground upon which the District Court had granted summary judgment, acknowledging that Albertson’s consistently required its truckdrivers to meet the DOT’s basic vision standards and that Kirkingburg had not met them (and indeed could not). The court recognized that the ADA allowed Albertson’s to establish a reasonable job-related vision standard as a prerequisite for hiring and that Albertson’s could rely on Government regulations as a basis for setting its standard. The court held, however, that Albertson’s could not use compliance with a Government regulation as the justification for its vision requirement because the waiver program, which Albertson’s disregarded, was “a lawful and legitimate part of the DOT regulatory scheme.” Id., at 1236. The Court of Appeals conceded that Albertson’s was free to set a vision standard different from that mandated by the DOT, but held that under the ADA, Albertson’s would have to justify its independent standard as necessary to prevent “a direct threat to the health or safety of other individuals in the workplace.” Ibid. (quoting 42 U.S.C. § 12113(b)). Although the court suggested that Albertson’s might be able to make such a showing on remand, 143 F.3d, at 1236, it ultimately took the position that the company could not, interpreting petitioner’s rejection of DOT waivers as flying in the face of the judgment about safety already embodied in the DOT’s decision to grant them, id., at 1237.

Judge Rymer dissented. She contended that Albertson’s had properly relied on the basic DOT vision standards in refusing to accept waivers because, when Albertson’s fired Kirkingburg, the waiver program did not rest upon “a rule or a regulation with the force of law,” but was merely a way of gathering data to use in deciding whether to refashion the still-applicable vision standards. Id., at 1239.

II

[1, 2] Though we need not speak to the issue whether Kirkingburg was an individual with a disability in order to resolve this case, that issue falls within the first question on which we granted certiorari; 8 525 U.S. 1064, 119 S.Ct. 791, 142 L.Ed.2d 654 (1999), and we think it worthwhile to address it briefly in order to correct three missteps the Ninth Circuit made in its discussion of the matter. Under the ADA:

The term ‘disability’ means, with respect to an individual—

“(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; “(B) a record of such an impairment; or “(C) being regarded as having such an impairment.” 42 U.S.C. § 12102(2).

We are concerned only with the first definition. 9 There is no dispute either that Kirkingburg’s amblyopia is a physical impairment within the meaning of the Act, see 29 CFR § 1630.2(h)(1) (1998) (defining “physical impairment” as “[a]ny physiological disorder, or condition . . . affecting one or more of the following body systems: . . . special sense organs”), or that seeing is one of his major life activities, see § 1630.2(i) (giving seeing as an example of a major life activity). 10 The

8. "Whether a monocular individual is 'disabled' per se, under the Americans with Disabilities Act." Pet. for Cert., i (citation omitted).

9. The Ninth Circuit also discussed whether Kirkingburg was disabled under the third, "regarded as," definition of "disability." See 143 F.3d, at 1233. Albertsons did not challenge that aspect of the Court of Appeals’s decision in its petition for certiorari, and we therefore do not address it.

10. As the parties have not questioned the regulations and interpretive guidance promulgated by the EEOC relating to the ADA’s definitional section, 42 U.S.C. § 12102, for the purposes of this
question is whether his monocular vision alone “substantially limits” Kirkingburg’s seeing.

In giving its affirmative answer, the Ninth Circuit relied on a regulation issued by the Equal Employment Opportunity Commission (EEOC), defining “substantially limits” as “[s]ignificantly restrict[s] as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.” § 1630.2(j)(ii). The Ninth Circuit concluded that “the manner in which Kirkingburg sees differs significantly from the manner in which most people see” because, “to put it in its simplest terms [he] sees using only one eye; most people see using two.” 143 F.3d, at 1232. The Ninth Circuit majority also relied on a recent Eighth Circuit decision, whose holding it acknowledged, in similar terms: “It was enough to warrant a finding of disability . . . that the plaintiff could see out of only one eye: the manner in which he performed the major life activity of seeing was different.” Ibid. (characterizing Doane v. Omaha, 115 F.3d 624, 627–628 (1997)).11

[3, 4] But in several respects the Ninth Circuit was too quick to find a disability. First, although the EEOC definition of “substantially limits” cited by the Ninth Circuit requires a “significant restriction” in an individual’s manner of performing a major life activity, the court appeared willing to settle for a mere difference. By transforming “significant restriction” into “difference,” the court undercut the fundamental statutory requirement that only impairments causing “substantial limitation[s]” in individuals’ ability to perform major life activities constitute disabilities. While the Act “addresses substantial limitations on major life activities, not utter inabilities,” Bragdon v. Abbott, 524 U.S. 624, 641, 118 S.Ct. 2196, 141 L.Ed.2d 540 (1998), it concerns itself only with limitations that are in fact substantial.

[5] Second, the Ninth Circuit appeared to suggest that in gauging whether a monocular individual has a disability a court need not take account of the individual’s ability to compensate for the impairment. The court acknowledged that Kirkingburg’s “brain has developed subconscious mechanisms for coping with [his] visual impairment and thus his body compensates for his disability.” 143 F.3d, at 1232. But in treating monocularity as itself sufficient to establish disability and in embracing Doane, the Ninth Circuit apparently adopted the view that whether “the individual had learned to compensate for the disability by making subconscious adjustments to the manner in which he sensed depth and perceived peripheral objects,” 143 F.3d, at 1232, was irrelevant to the determination of the issue. 

11. Before the Ninth Circuit, Albertson’s presented the issue of Kirkingburg’s failure to meet the Act’s definition of disability as an alternative ground for affirmance, i.e., for a grant of summary judgment in the company’s favor. It thus contended that Kirkingburg had “failed to produce any material issue of fact” that he was disabled. App. 182. Parts of the Ninth Circuit’s discussion suggest that it was merely denying the company’s request for summary judgment, leaving the issue open for factual development and resolution on remand. See, e.g., 143 F.3d, at 1232 (“Albertson’s first contends that Kirkingburg failed to raise a genuine issue of fact regarding whether he is disabled”); ibid. (“Kirkingburg has presented uncontroverted evidence showing that . . . [his] inability to see out of one eye affects his peripheral vision and his depth perception’’); ibid. (“if the facts are as Kirkingburg alleges’’). Moreover the Government (and at times even Albertson’s, see Pet. for Cert. 15) understands the Ninth Circuit to have been simply explaining why the company was not entitled to summary judgment on this score. See Brief for United States et al. as Amici Curiae 11, and n. 5 (“The Ninth Circuit therefore correctly declined to grant summary judgment to petitioner on the ground that monocular vision is not a disability’’). Even if that is an accurate reading, the statements the Ninth Circuit made setting out the standards governing the finding of disability would have largely dictated the outcome. Whether one views the Ninth Circuit’s opinion as merely denying summary judgment for the company or as tantamount to a grant of summary judgment for Kirkingburg, our rejection of the sweeping character of the Court of Appeals’s pronouncements remains the same.
nation of disability. See, e.g., Sutton v. United Air Lines, Inc., 130 F.3d 893, 901, n. 7 (C.A.10 1997) (characterizing Doane as standing for the proposition that mitigating measures should be disregarded in assessing disability); EEOC v. Union Pacific R. Co., 6 F.Supp.2d 1135, 1137 (D.Idaho 1998) (same). We have just held, however, in Sutton v. United Airlines, Inc., 527 U.S., at 482, 119 S.Ct. 2139, that mitigating measures must be taken into account in judging whether an individual possesses a disability. We see no principled basis for distinguishing between measures undertaken with artificial aids, like medications and devices, and measures undertaken, whether consciously or not, with the body’s own systems.

[6–8] Finally, and perhaps most significantly, the Court of Appeals did not pay much heed to the statutory obligation to determine the existence of disabilities on a case-by-case basis. The Act expresses that mandate clearly by defining “disability” “with respect to an individual,” 42 U.S.C. § 12102(2), and in terms of the impact of an impairment on “such individual,” § 12102(2)(A). See Sutton, 527 U.S., at 483, 119 S.Ct. 2139; cf. 29 CFR pt. 1630, App. § 1630.2(j) (1998) (“The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual”); ibid. (“The determination of whether an individual is substantially limited in a major life activity must be made on a case by case basis”). While some impairments may invariably cause a substantial limitation of a major life activity, cf. Bragdon, supra, at 642, 118 S.Ct. 2196 (declining to address whether HIV infection is a per se disability), we cannot say that monocularity does. That category, as we understand it, may embrace a group whose members vary by the degree of visual acuity in the weaker eye, the age at which they suffered their vision loss, the extent of their compensating adjustments in visual techniques, and the ultimate scope of the restrictions on their visual abilities. These variables are not the stuff of a per se rule. While monocularity inevitably leads to some loss of horizontal field of vision and depth perception,12 consequences the Ninth Circuit mentioned, see 143 F.3d, at 1232, the court did not identify the degree of loss suffered by Kirkingburg, nor are we aware of any evidence in the record specifying the extent of his visual restrictions.

This is not to suggest that monocular individuals have an onerous burden in trying to show that they are disabled. On the contrary, our brief examination of some of the medical literature leaves us sharing the Government’s judgment that people with monocular vision “ordinarily” will meet the Act’s definition of disability, Brief for United States et al. as Amici Curiae 11, and we suppose that defendant companies will often not contest the issue. We simply hold that the Act requires monocular individuals, like others claiming the Act’s protection, to prove a disability by offering evidence that the extent of the limitation in terms of their own experience, as in loss of depth perception and visual field, is substantial.

III

Petitioner’s primary contention is that even if Kirkingburg was disabled, he was not a “qualified” individual with a disability, see 42 U.S.C. § 12112(a), because Albertson’s merely insisted on the minimum level of visual acuity set forth in the DOT’s Motor Carrier Safety Regulations, 49 CFR § 391.41(b)(10) (1998). If Albertson’s was entitled to enforce that standard as defining an “essential job function” of the employment position,” see 42 U.S.C. § 12111(8), that

12. Individuals who can see out of only one eye are unable to perform stereopsis, the process of combining two retinal images into one through which two-eyed individuals gain much of their depth perception, particularly at short distances. At greater distances, stereopsis is relatively less important for depth perception. In their distance vision, monocular individuals are able to compensate for their lack of stereopsis to varying degrees by relying on monocular cues, such as motion parallax, linear perspective, overlay of contours, and distribution of highlights and shadows. See Von Noorden, supra n. 2, at 23–30; App. 300–302.
is the end of the case, for Kirkingburg concededly could not satisfy it.\textsuperscript{13}

\textsuperscript{13}Under Title I of the ADA, employers may justify their use of “qualification standards . . . that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability,” so long as such standards are “job-related and consistent with business necessity, and . . . performance cannot be accomplished by reasonable accommodation . . . .” § 12113(a). See also § 12112(b)(6) (defining discrimination to include “using qualification standards . . . that screen out or tend to screen out an individual with a disability . . . unless the standard . . . is shown to be job-related for the position in question and is consistent with business necessity”).\textsuperscript{14}

Kirkingburg and the Government argue that these provisions do not authorize an employer to follow even a facially applicable regulatory standard subject to waiver without making some enquiry beyond determining whether the applicant or employee meets that standard, yes or no. Before an employer may insist on compliance, they say, the employer must make a showing with reference to the particular job that the waivable regulatory standard is “job-related . . . and . . . consistent with business necessity,” see § 12112(b)(6), and that after consideration of the capabilities of the individual a reasonable accommodation could not fairly resolve the competing interests when an applicant or employee cannot wholly satisfy an otherwise justifiable job qualification.

Kirkingburg asserts that in showing that Albertson’s initially allowed him to drive with a DOT certification, despite the fact that he did not meet the DOT’s minimum visual acuity requirement, he produced evidence from which a reasonable juror could find that he satisfied the legitimate prerequisites of the job. See Brief for Respondent 36, 37; see also id., at 6. But petitioner’s argument is a legal, not a factual, one. In any event, the ample evidence in the record on petitioner’s policy of requiring adherence to minimum DOT vision standards for its truckdrivers, see, e.g., App. 53, 55–56, 333, would bar any inference that petitioner’s failure to detect the discrepancy between the level of visual acuity Kirkingburg was determined to have had during his first two certifications and the DOT’s minimum visual acuity requirement raised a genuine factual dispute on this issue.

\textsuperscript{14}The EEOC’s regulations implementing Title I define “[q]ualification standards” to mean “the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by a covered entity as requirements which an individual must meet in order to be eligible for the position held or desired.” 29 CFR § 1630.2(q) (1998).

\textsuperscript{15}This appears to be the position taken by the EEOC in the Interpretive Guidance promulgated under its authority to issue regulations to carry out Title I of the ADA, 42 U.S.C. § 12116, see 29 CFR pt. 1630, App. §§ 1630.15(b) and (c) (1998) (requiring safety-related standards to be evaluated under the ADA’s direct threat standard); see also App. § 1630.10 (noting that selection criteria that screen out individuals with disabilities,
Albertson's answers essentially that even assuming the Government has proposed a sound reading of the statute for the general run of cases, this case is not in the general run. It is crucial to its position that Albertson's here was not insisting upon a job qualification merely of its own devising, subject to possible questions about genuine appropriateness and justifiable application to an individual for whom some accommodation may be reasonable. The job qualification it was applying was the distant visual acuity standard of the Federal Motor Carrier Safety Regulations, 49 CFR § 391.41(b)(10) (1998), which is made binding on Albertson's by § 391.11: “[A] motor carrier shall not . . . permit a person to drive a commercial motor vehicle unless that person is qualified to drive,” by, among other things, meeting the physical qualification standards set forth in § 391.41. The validity of these regulations is unchallenged, they have the force of law, and they contain no qualifying language about individualized determinations.

If we looked no further, there would be no basis to question petitioner's unconditional obligation to follow the regulations and its consequent right to do so. This, indeed, was the understanding of Congress when it enacted the ADA, see infra, at 2172–2173.

But there is more: the waiver program. The Court of Appeals majority concluded that the waiver program “precludes [employers] from declaring that persons determined by DOT to be capable of performing the job of commercial truck driver are incapable of performing that job by virtue of their disability,” and that in the face of a waiver an employer “will not be able to avoid the [ADA’s] strictures by showing that its standards are necessary to prevent a direct safety threat,” 143 F.3d, at 1237. The Court of Appeals thus assumed that the regulatory provisions for the waiver program had to be treated as being on par with the basic visual acuity regulation, as if the general rule had been modified by some different safety standard made applicable by grant of a waiver. Cf. Conroy v. Aniskoff, 507 U.S. 511, 515, 113 S.Ct. 1562, 123 L.Ed.2d 229 (1993) (noting the “‘cardinal rule that a statute is to be read as a whole’” (quoting King v. St. Vincent’s Hospital, 502 U.S. 215, 221, 112 S.Ct. 570, 116 L.Ed.2d 578 (1991))). On this reading, an individualized determination under a different substantive safety rule was an element of the regulatory regime, which would easily fit with any requirement of 42 U.S.C. §§ 12113(a) and (b) to consider reasonable accommodation. An employer resting solely on the federal standard for its visual acuity qualification would be required to accept a waiver once obtained, and probably to provide an applicant some opportunity to obtain a waiver whenever that was reasonably possible. If this was sound analysis, the District Court’s summary judgment for Albertson’s was error.

But the reasoning underlying the Court of Appeals’s decision was unsound, for we think it was error to read the regulations establishing the waiver program as modifying the content of the basic visual acuity standard in a way that disentitled an employer like Albertson’s to insist on it. To be sure, this is not immediately apparent. If one starts with the statutory provisions authorizing regulations by the DOT as they stood at the time the DOT began the waiver program, one would reasonably presume that the general regulatory standard and the regulatory waiver standard ought to be accorded equal substantive significance, so that the content of any general regulation would as a matter of law be deemed modified by the terms of any standards other than job requirements, is a sound one, we have no need to confront the validity of the reading in this case.

16. The implementing regulations of Title I also recognize a defense to liability under the ADA that “a challenged action is required or necessitated by another Federal law or regulation,” 29 CFR § 1630.15(e) (1998). As the parties do not invoke this specific regulation, we have no occasion to consider its effect.
waiver standard thus applied to it. Compare 49 U.S.C.App. § 2505(a)(3) (1988 ed.) (“Such regulation shall ... ensure that ... the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely.”), with 49 U.S.C.App. § 2505(f) (1988 ed.) (“After notice and an opportunity for comment, the Secretary may waive, in whole or in part, such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles is adequate to enable them to operate the vehicles safely.”). Safe operation is supposed to be the touchstone of regulation in each instance.

As to the general visual acuity regulations in force under the former provision, affirmative determinations that the selected standards were needed for safe operation were indeed the predicates of the DOT action. Starting in 1937, the federal agencies authorized to regulate commercial motor vehicle safety set increasingly rigorous visual acuity standards, culminating in the current one, which has remained unchanged since it became effective in 1971. When the FHWA proposed it, the agency found that “[a]ccident experience in recent years has demonstrated that reduction of the effects of organic and physical disorders, emotional impairments, and other limitations of the good health of drivers are increasingly important factors in accident prevention.” 34 Fed.Reg. 9080, 9081 (1969) (Notice of Proposed Rule Making); the current standard was adopted to reflect the agency’s conclusion that “drivers of modern, more complex vehicles” must be able to “withstand the increased physical and mental demands that their occupation now imposes.” 35 Fed.Reg. 6458 (1970).

Given these findings and “in the light of discussions with the Administration’s medical advisers,” id., at 6459, the FHWA made a considered determination about the level of visual acuity needed for safe operation of commercial motor vehicles in interstate commerce, an “area [in which] the risks involved are so well known and so serious as to dictate the utmost caution.” Id., at 17419.

[9] For several reasons, one would expect any regulation governing a waiver program to establish a comparable substantive standard (albeit for exceptional cases), grounded on known facts indicating at least that safe operation would not be jeopardized. First, of course, safe operation was the criterion of the statute authorizing an administrative waiver scheme, as noted already. Second, the impetus to develop a waiver program was a concern that the existing substantive standard might be more demanding than safety required. When Congress enacted the ADA, it recognized that federal safety rules would limit application of the ADA as a matter of law. The Senate Labor and Human Resources Committee Report on the ADA stated that “a person with a disability applying for or currently holding a job subject to which likewise required the agency to regulate to ensure “safety of operation.”

20. The Interstate Commerce Commission promulgated the first visual acuity regulations for interstate commercial drivers in 1937, requiring “[g]ood eyesight in both eyes (either with or without glasses, or by correction with glasses), including adequate perception of red and green colors.” 2 Fed.Reg. 113120 (1937). In 1939, the visual standard was changed to require “visual acuity (either without glasses or by correction with glasses) of not less than 20/40 (Snellen) in one eye, and 20/100 (Snellen) in the other eye; form field of not less than 45 degrees in all meridians from the point of fixation; ability to distinguish red, green, and yellow.” 57 Fed.Reg. 6793–6794 (1992) (internal quotation marks omitted). In 1952, the visual acuity standard was strengthened to require at least 20/40 (Snellen) in each eye. Id., at 6794.
[DOT standards for drivers] must be able to satisfy these physical qualification standards in order to be considered a qualified individual with a disability under title I of this legislation.


Finally, when the FHWA instituted the waiver program it addressed the statutory mandate by stating in its notice of final disposition that the scheme would be “consistent with the safe operation of commercial motor vehicles,” just as 49 U.S.C.App. § 2505(f) (1988 ed.) required, 57 Fed.Reg. 31460 (1992).

And yet, despite this background, the regulations establishing the waiver program did not modify the general visual acuity standards. It is not that the waiver regulations failed to do so in a merely formal sense, as by turning waiver decisions on driving records, not sight requirements. The FHWA in fact made it clear that it had no evidentiary basis for concluding that the pre-existing standards could be lowered consistently with public safety. When, in 1992, the FHWA published an “advance notice of proposed rulemaking” requesting comments “on the need, if any, to amend its driver qualification requirements relating to the vision standard,” id., at 6793, it candidly proposed its waiver scheme as simply a means of obtaining information bearing on the justifiability of revising the binding standards already in place, see id., at 10295. The agency explained that the “object of the waiver program is to provide objective data to be considered in relation to a rulemaking exploring the feasibility of relaxing the current absolute vision standards in 49 CFR part 391 in favor of a more individualized standard.” Ibid. As proposed, therefore, there was not only no change in the unconditional acuity standards, but no indication even that the FHWA then had a basis in fact to believe anything more lenient would be consistent with public safety as a general matter. After a bumpy stretch of administrative procedure, see Advocates for Highway and Auto Safety v. FHWA, 28 F.3d 1288, 1290 (C.A.D.C.1994), the FHWA’s final disposition explained again that the waivers were proposed as a way to gather facts going to the wisdom of changing the existing law. The waiver program “will enable the FHWA to conduct a study comparing a group of experienced, visually deficient drivers with a control group of experienced drivers who meet the current Federal vision requirements. This study will provide the empirical data necessary to evaluate the relationships between specific visual deficiencies and the operation of [commercial motor vehicles]. The data will permit the FHWA to properly evaluate its current vision requirement in the context of actual driver performance, and, if necessary, establish a new vision requirement which is safe, fair, and rationally related to the latest medical knowledge and highway technology.” 57 Fed.Reg. 31458 (1992).

In sum, the regulatory record made it plain that the waiver regulation did not rest on any final, factual conclusion that the waiver scheme would be conducive to public safety in the manner of the general acuity standards and did not purport to modify the
Though irrelevant to the disposition of this case, it is hardly surprising that two years after the events here the waiver regulations were struck down for failure of the FHWA to support its formulaic finding of consistency with public safety. See Advocates for Highway and Auto Safety v. FHWA, 28 F.3d 1288, 1289 (C.A.D.C. 1994). On remand, the agency “revalidated” the waivers it had already issued, based in part on evidence relating to the safety of drivers in the program that had not been included in the record before the District of Columbia Circuit. See 59 Fed.Reg. 50887, 50889–50890 (1994); id., at 59386, 59389. In the meantime the FHWA has apparently continued to want things both ways. It has said publicly, based on a review of the data it collected from the waiver program itself, that the drivers who obtained such waivers have performed better as a class than those who satisfied the regulation. See id., at 50887, 50890. It has also recently noted that its medical panel has recommended “leaving the visual acuity standard unchanged,” see 64 Fed.Reg. 16518 (1999) (citing F. Berson, M. Kuperwaser, L. Aiello, and J. Rosenberg, Visual Requirements and Commercial Drivers, Oct. 16, 1998), a recommendation which the FHWA has concluded supports its “view that the present standard is reasonable and necessary as a general standard to ensure highway safety.” 64 Fed.Reg. 16518 (1999).
104 Stat. 327, as amended, 42 U.S.C. § 12101 et seq. (1994 ed. and Supp. III), it requires that petitioner justify the Department of Transportation’s (DOT) visual acuity standards as job related, consistent with business necessity, and required to prevent employees from imposing a direct threat to the health and safety of others in the workplace. The Court assumes, for purposes of this case, that the Government’s reading is, for the most part, correct. Ante, at 2170, and n. 15. I agree with the Court’s decision that, even when the case is analyzed through the Government’s proposed lens, petitioner was entitled to summary judgment in this case. As the Court explains, ante, at 2174, it would be unprecedented and nonsensical to interpret § 12113 to require petitioner to defend the application of the Government’s regulation to respondent when petitioner has an unconditional obligation to enforce the federal law. As the Court points out, though, ante, at 2169, DOT’s visual acuity standards might also be relevant to the question whether respondent was a “qualified individual with a disability” under 42 U.S.C. § 12112(a). That section provides that no covered entity “shall discriminate against a qualified individual with a disability because of the disability of such individual.” Presumably, then, a plaintiff claiming a cause of action under the ADA bears the burden of proving, inter alia, that he is a qualified individual. The phrase “qualified individual with a disability” is defined to mean:

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an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.” § 12111(8) (emphasis added).

In this case, respondent sought a job driving trucks in interstate commerce. The quintessential function of that job, it seems to me, is to be able to drive a commercial truck in interstate commerce, and it was respondent’s burden to prove that he could do so.

As the Court explains, ante, at 2171, DOT’s Motor Carrier Safety Regulations have the force of law and bind petitioner—it may not, by law, “permit a person to drive a commercial motor vehicle unless that person is qualified to drive.” 49 CFR § 391.11 (1999). But by the same token, DOT’s regulations bind respondent, who “shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle.” Ibid.; see also § 391.41 (“A person shall not drive a commercial motor vehicle unless he/she is physically qualified to do so”). Given that DOT’s regulation equally binds petitioner and respondent, and that it is conceded in this case that respondent could not meet the federal requirements, respondent surely was not “qualified” to perform the essential functions of petitioner’s truckdriver job without a reasonable accommodation.

The result of this case is the same under either view of the statute. If forced to choose between these alternatives, however, I would prefer to hold that respondent, as a matter of law, was not qualified to perform the job he sought within the meaning of the ADA. I nevertheless join the Court’s opinion. The Ninth Circuit below viewed respondent’s ADA claim on the Government’s terms and petitioner’s argument here appears to be tailored around the Government’s view. In these circumstances, I agree with the Court’s approach. I join the Court’s opinion, however, only on the understanding that it leaves open the argument that federal laws such as DOT’s visual acuity standards might be critical in determining whether a plaintiff is a “qualified individual with a disability.”