Small fleet operator Mark White of Hartsville, Tenn., has been involved in the family business, Old Time Express, since his father founded it in the mid-1990s.

Bo White “almost went broke the first month,” Mark White says of his father. Today, however, the company uses about 25 company-driven and owner-operator trucks. “It’s been the sheer grace of God that we got this far.”

That growth came slowly, in keeping with Bo White’s philosophy of doing business in a time-honored way. Traditional approaches to trucking have been changing, though, since the advent of the Federal Motor Carrier...
A carrier rated Satisfactory under CSA, the source went on, may need more enforcement attention than a carrier with an “ancient” SafeStat Conditional. That’s because, in FMCSA’s view, the performance data delivered by the CSA Safety Measurement System are better markers of carrier safety than the snapshot-rating approach of the old model.

Even though FMCSA is placing less importance on Conditional ratings, some in the private sector see the Conditional rating of the old model as gaining even greater import for small carriers’ business prospects. Combined with CSAs seven BASIC category measures of carrier compliance, the Conditional rating has assumed greater importance in broker and shipper carrier-selection processes. That link-age largely is ignored by FMCSA’s new approach to Conditional ratings.

Meanwhile, the replacement for the SafeStat rating model remains years off. The agency plans to tie a new “Safety Fitness Determination” rating to performance-based data garnered from roadside inspections and crashes.

Conditional carriers before and after CSA

“There are carriers out there who have been Conditional for 10 to 15 years,” says longtime regulatory consultant Richard Wilson, based in Delaware. If they don’t have high CSA scores, they have no reason to request a review to upgrade to Satisfactory, which 385.17 of the Code of Federal Regulations allows at any time. That “why bother” approach “is the old philosophy,” says Wilson.

He tells of Conditional carriers he’s worked with that have gotten their compliance operation in shape after the rating was handed down. Six months to a year after beginning such work, Wilson typically would advise the carrier to request a voluntary compliance review to upgrade to Satisfactory, inviting FMCSA to come take a look. By then, Wilson’s done what amounts to “a complete compliance review myself,” he says.

In the past, following such reviews, “70 percent of the feedback I’d get is that, ‘It hasn’t bothered us, it hasn’t cost us business. As long as we keep ourselves under the radar, we don’t have to worry about dealing with the FMCSA.’”

The new world, however, is proving otherwise. Old Time Express’ most recent audit was its fifth since 1999, according to the CSA SMS. It was prompted after the fleet “popped a triangle,” or exceeded the intervention threshold, in the Hours of Service Compliance BASIC in the CSA SMS, Mark White says.

On March 15, 2012, an inspector came out for the audit. “He’d been the one doing the previous two or three...
audits, a nice guy and a former driver,” White says. He uncovered a pattern of hours violations by requesting time-stamped fuel receipts, something he’d not done previously.

The audit is listed on Old Time Express’ carrier profile in the CSA SMS as a traditional compliance review, but White’s telling of it sounds like it began as a focused hours of service intervention. It resulted in a Conditional safety rating in addition to the high Hours BASIC score.

Larger brokers said, “ ‘Look, we’re not going to load you.’ Over time, more and more started to drop off,” White says. “There were some who would say that as long as you can show us that in good faith you’re making an attempt” to improve things, “we’ll keep using you.”

In the aftermath: “Roadside inspections spiked,” White says. This likely had less to do with the company’s Conditional rating and more to do with its “alert” status in the Hours of Service BASIC. The Hours BASIC is the only one of the seven CSA categories of measurement where a single alert status flags carriers for roadside inspections.

Before it could get better, Old Time Express started to look worse. Its Hours BASIC score went up, and with all the added inspections, maintenance violations pushed its Vehicle Maintenance score eventually fairly close to the intervention threshold.

Meanwhile, trying to deal with the Conditional rating, the carrier initiated a log-auditing service and repeatedly stressed the importance of log book currency and accuracy and operating within legal constraints. However, two to three months following the Conditional rating, the plan was rejected by the Tennessee FMCSA division as inadequate, White says. The agency declined to conduct a follow-up review.

Old Time Express was experiencing what transportation attorney Henry Seaton calls the “safety jail” effect. It happens when the Conditional rating is combined with a golden triangle or two in the CSA SMS, said Seaton, speaking last fall at the National Association of Small Trucking Companies’ annual meeting.

“It’s their game, and you’ve got two choices – play it by their rules, or go and find yourself another game.”

— Mark White, Old Time Express
annual meeting in Nashville, Tenn.:
“Some say a Conditional safety rating is the new Unsatisfactory. Conditional now is much more difficult to get upgraded.” The longer the agency waits to come back out to re-evaluate a carrier, he added, “it basically starves [a carrier] out of business.”

Wilson concurs. From the shipper’s point of view, value of service, time to deliver and cost were the primary elements of “the old formula,” as he calls it. Now an insurer, taking note of a carrier’s Conditional rating and SMS ratings, tells the shipper, “We don’t think you ought to be dealing with these people,” he says.

‘Play the game’ to get out of the lockup

With no due process on follow-up reviews of Conditional carriers in the statute, says Seaton, such carriers “get left in purgatory.” Seaton’s colleagues deal with state administrators processing petitions for review who often take the “I’ll get around to it when I get around to it” approach to such requests, he says. Others say they’ll wait for CSA scores to improve before reviewing a petition.

Mark White saw it firsthand. “Even a convicted felon at some point serves his sentence and gets out,” he says. With further attempts at garnering a follow-up review going nowhere, about a year into the Conditional rating “we started fielding calls from direct customers,” he adds, that went something like this: “My safety department is really looking at this – and I can only go to bat for you for so long.’ And then you start getting rejected bidding on new business, and it starts to really irritate you.”

At wits’ end, in spring 2013, the Whites said to themselves, “What if we just go e-logs?”

About the same time, Brands Truck Insurance, the company’s agent, offered to send a consultant it uses for new business, and it starts to really irritate you.”

The consultant, Jeff Davis of Fleet Safety Services, eventually felt the move was a savvy one when it came to pleasing FMCSA’s Tennessee division, White says. With continuing federal moves toward an electronic-log mandate, “he thought we were really setting ourselves up to be the poster child for what they wanted to happen.”

Still, Old Time Express’ circumstances didn’t change until it was called into FMCSA’s Tennessee division at the Nashville headquarters in March of this year, after two years under the Conditional status. Officials reviewed compliance evidence prepared by Davis and recommended a reinstatement of Old Time Express’ prior Satisfactory rating to the regional Atlanta office. It was approved days later.

White and others suggest that reinstatements like that which Old Time Express received – with just a visit to the FMCSA division office – are rare, given a carrier rated Conditional after being unrated would require another onsite audit. It helps when you have a consultant who knows how to work the system on your side,

May 2013, to begin trying out an Omnitracs e-logs system. The carrier invested $20,000 in the system and ongoing $40-per-unit subscription fees. It was a huge expense for a company of its size.

The consultant, Jeff Davis of Fleet Safety Services, eventually felt the move was a savvy one when it came to pleasing FMCSA’s Tennessee division, White says. With continuing federal moves toward an electronic-log mandate, “he thought we were really setting ourselves up to be the poster child for what they wanted to happen.”

Still, Old Time Express’ circumstances didn’t change until it was called into FMCSA’s Tennessee division at the Nashville headquarters in March of this year, after two years under the Conditional status. Officials reviewed compliance evidence prepared by Davis and recommended a reinstatement of Old Time Express’ prior Satisfactory rating to the regional Atlanta office. It was approved days later.

White and others suggest that reinstatements like that which Old Time Express received – with just a visit to the FMCSA division office – are rare, given a carrier rated Conditional after being unrated would require another onsite audit. It helps when you have a consultant who knows how to work the system on your side,
OLD TIME EXPRESS’ TWO-YEAR ODYSSEY IN THE REGULATORY LABYRINTH

MARCH 2012
Fleet exceeds intervention threshold in Hours of Service Compliance BASIC. An inspector does onsite audit and issues Conditional safety rating.

SHORTLY THEREAFTER ...
Larger brokers begin to break ties. “Alert” status in Hours BASIC causes spike in roadside inspections, leading to maintenance violations, which push Vehicle Maintenance score up.

TWO TO THREE MONTHS AFTER CONDITIONAL RATING
The carrier initiates log-auditing service, more emphasis on logbook compliance. FMCSA rejects corrective action plan and declines follow-up review.

JUNE 2012-APRIL 2013
With Conditional rating combined with a BASIC alert and rising scores in other categories, Old Time Express sees more brokered business dry up and is forced to address more direct customers’ concerns.

MAY 2013
Old Time Express invests in electronic logs and beefs up back-office operation to take pressure off drivers.

MARCH 2014
FMCSA reinstates Old Time Express’ prior Satisfactory rating.

PUBLIC SCRUTINY OF SAFETY RATINGS IN CSA SMS REMAINS UNCERTAIN

Today, while a carrier’s Compliance, Safety, Accountability Safety Measurement System profile front page shows its investigation history, it does not list any safety rating information from the SafeStat system. Following recommendations from industry stakeholders in 2013, the Federal Motor Carrier Safety Administration introduced a proposed revamp of the online display that, front and center of a carrier’s front page, includes that carrier’s current safety rating.

During the February 2013 meeting of FMCSA’s Motor Carrier Safety Advisory Committee, Associate Administrator for Enforcement Bill Quade said changes he described as “tweaks” could be implemented as early as May. As of press time, however, those changes had not been made.

Among those no doubt to be unhappy with the display changes is Rick Gobbell, formerly of FMCSA’s Tennessee division and currently a regulatory consultant to industry operating near Nashville, Tenn. In his prior role as the National Association of Small Trucking Companies’ vice president of safety and compliance, Gobbell submitted comments to the federal docket on the display changes that excoriated the agency over its public display of CSA scoring metrics. Gobbell argued the bell-curve nature of the SMS BASIC scores “demonizes ... 35 percent of carriers all the time,” thus providing convenient statistical justification for FMCSA budget requests.

“It challenges our faith in our federal government,” he wrote, “when one of our agencies, without going through a Rulemaking proceeding, decides that it is acceptable to damage good people in order to get to the 5-8 percent of our industry that are truly ‘bad actors.’ ... This type of mindset creates collateral damage to someone incidental of the intended target. This happens every day with CSA/SMS displays.”

PUBLIC SCRUTINY OF SAFETY RATINGS IN CSA SMS REMAINS UNCERTAIN

Today, while a carrier’s Compliance, Safety, Accountability Safety Measurement System profile front page shows its investigation history, it does not list any safety rating information from the SafeStat system. Following recommendations from industry stakeholders in 2013, the Federal Motor Carrier Safety Administration introduced a proposed revamp of the online display that, front and center of a carrier’s front page, includes that carrier’s current safety rating.

During the February 2013 meeting of FMCSA’s Motor Carrier Safety Advisory Committee, Associate Administrator for Enforcement Bill Quade said changes he described as “tweaks” could be implemented as early as May. As of press time, however, those changes had not been made.

Among those no doubt to be unhappy with the display changes is Rick Gobbell, formerly of FMCSA’s Tennessee division and currently a regulatory consultant to industry operating near Nashville, Tenn. In his prior role as the National Association of Small Trucking Companies’ vice president of safety and compliance, Gobbell submitted comments to the federal docket on the display changes that excoriated the agency over its public display of CSA scoring metrics. Gobbell argued the bell-curve nature of the SMS BASIC scores “demonizes ... 35 percent of carriers all the time,” thus providing convenient statistical justification for FMCSA budget requests.

“It challenges our faith in our federal government,” he wrote, “when one of our agencies, without going through a Rulemaking proceeding, decides that it is acceptable to damage good people in order to get to the 5-8 percent of our industry that are truly ‘bad actors.’ ... This type of mindset creates collateral damage to someone incidental of the intended target. This happens every day with CSA/SMS displays.”