action to ensure the safe operation of the aircraft;
   (ii) Less than 1 mile laterally from any geographic feature within the park
   (unless more than ½ mile outside the boundary); or
   (iii) Except as provided in §136.35.

(2) The Administrator may consider the following factors in determining whether a flight is a commercial air tour operation for purposes of this subpart—
   (i) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;
   (ii) Whether a narrative that referred to areas or points of interest on the surface below the route of the flight was provided by the person offering the flight;
   (iii) The area of operation;
   (iv) The frequency of flights conducted by the person offering the flight;
   (v) The route of flight;
   (vi) The inclusion of sightseeing flights as part of any travel arrangement package offered by the person offering the flight;
   (vii) Whether the flight would have been canceled based on poor visibility of the surface below the route of the flight; and
   (viii) Any other factors that the Administrator and Director consider appropriate.

(3) For purposes of §136.35, means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park.

(e) National park means any unit of the national park system. (See title 16 of the U.S. Code, section 1, et seq.)

(f) Tribal lands means that portion of Indian country (as that term is defined in section 1151 of title 18 of the U.S. Code) that is within or abutting a national park.

(g) Administrator means the Administrator of the Federal Aviation Administration.

(h) Director means the Director of the National Park Service.

(i) Superintendent means the duly appointed representative of the National Park Service for a particular unit of the national park system.

§136.35 Prohibition of commercial air tour operations over the Rocky Mountain National Park.

All commercial air tour operations in the airspace over the Rocky Mountain National Park are prohibited regardless of altitude.

§136.37 Overflights of national parks and tribal lands.

(a) General. A commercial air tour operator may not conduct commercial air tour operations over a national park or tribal land except—
   (1) In accordance with this section;
   (2) In accordance with conditions and limitations prescribed for that operator by the Administrator; and
   (3) In accordance with any applicable air tour management plan for the park or tribal lands.

(b) Application for operating authority. Before commencing commercial air tour operations over a national park or tribal lands, a commercial air tour operator shall apply to the Administrator for authority to conduct the operations over the park or tribal lands.

(c) Number of operations authorized. In determining the number of authorizations to issue to provide commercial air tour operations over a national park, the Administrator, in cooperation with the Director, shall take into consideration the provisions of the air tour management plan, the number of existing commercial air tour operators and current level of service and equipment provided by any such operators, and the financial viability of each commercial air tour operation.

(d) Cooperation with National Park Service. Before granting an application under this subpart, the Administrator, in cooperation with the Director, shall develop an air tour management plan in accordance with §136.39 and implement such a plan.